

FY 2012

Office of Enforcement and
Compliance Assurance (OECA)

Draft

National Program Manager (NPM) Guidance

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EXECUTIVE SUMMARY

A. Program Office

This guidance applies to the Office of Enforcement and Compliance Assurance (OECA), all Environmental Protection Agency (EPA) regional enforcement programs, and States and Tribes implementing EPA-approved inspection and enforcement programs¹. OECA designs, develops, implements and oversees national enforcement programs, while the regional offices work with States, Tribes, and others to implement these programs. The OECA *National Enforcement Program Managers Guidance* (NPMG) for fiscal year (FY) 2012 describes how EPA should work with state and tribal governments to enforce environmental laws that protect and improve the quality of the Nation's environment and public health.

B. Introduction/ Context

EPA's national enforcement and compliance assurance program is multi-media in scope and breadth. The national program maximizes compliance with ten distinct federal environmental statutes using a variety of tools, including civil and criminal enforcement, compliance assistance, incentives, and monitoring, as well as other strategies to improve compliance, such as publication of compliance information. OECA implements a total of 28 separate program areas dealing with prevention and control of air pollution, water pollution, hazardous waste, toxic substances, and pesticides. The statutory and regulatory requirements of these programs apply to a diverse universe of regulated entities. EPA works closely with the states to assure that enforcement programs achieve the protections of the environmental laws and provide a level playing field for responsible businesses.

The majority of the work in the FY 2012 NPMG is accomplished under Goal 5 - "Enforcing Environmental Laws" in the FY 2011-2015 EPA Strategic Plan (<http://www.epa.gov/planandbudget/strategicplan.html>). Goal 5 of the Strategic Plan addresses how EPA will address pollution problems through vigorous and targeted civil and criminal enforcement, promote compliance and deter violations by achieving set enforcement goals, including those for national enforcement initiatives with special emphasis on potential environmental justice concerns and those in Indian country.

The FY 2012 NPMG is organized to describe, for each statutory authority, the national enforcement and program office priorities, and other key enforcement actions to achieve EPA's enforcement goals.

C. Program Priorities

OECA's work aligns with and implements the Administrator's priorities in the following ways:

¹ EPA implements programs in states and Indian country until EPA approves the state or Tribe to implement the inspection and enforcement program.

- Taking Action on Climate Change: Enforcement supports the Agency's climate strategy by recognizing reductions of global warming pollution in settlements of enforcement actions. OECA will be working to support the integrity of the monitoring and reporting system for global warming pollution by assuring compliance with the greenhouse gases reporting rule.
- Improving Air Quality: Enforcement helps improve air quality in communities by targeting large pollution sources, especially in the utility, acid, cement and glass industries, and taking aggressive action to bring them into compliance, which may include installing controls that will benefit communities and improve emission monitoring. OECA is working closely with the Office of Air and Radiation to reduce toxic air pollution, through protective enforcement, permitting and standards, especially in communities that are disproportionately affected by pollution now. OECA will continue to work with States and Tribes to improve monitoring of compliance with air pollution standards and make sure that action is taken against serious violations that affect community air quality.
- Assuring the Safety of Chemicals: As the Agency steps up its review of chemical safety and pushes for reform, OECA will work closely with the Office of Chemical Safety and Pollution Prevention to achieve its goals. The enforcement program will take action when we find violations of standards for high-concern chemicals.
- Cleaning Up Our Communities: Enforcement ensures that parties responsible for contamination step up to their cleanup responsibilities. By ensuring that the polluter pays whenever possible, OECA's efforts result in more cleanups, which protect more communities from exposure and returns properties to productive use. OECA will also use enforcement to spur cleanup at RCRA corrective action sites where the cleanup progress is stalled.
- Protecting America's Waters: OECA is revamping the water enforcement program to focus on the problems that are the biggest threat to the nation's waters. At the same time, OECA will increase oversight of the States and work to define the shared accountability of EPA, States and Tribes for clean water, working closely with the Office of Water. OECA will improve transparency, to enlist the public in holding sources and government accountable.
- Expanding the Conversation on Environmentalism and Working for Environmental Justice: In all OECA's enforcement work, as described above, OECA can help protect communities by targeting enforcement in areas where we find serious noncompliance and where communities face multiple pollution threats. OECA works with other federal agencies to make sure environmental justice considerations are included in their decision-making process as they prepare environmental analyses (environmental impact statements or environmental assessments) under the National Environmental Policy Act (NEPA). OECA also will make available more understandable information on facility compliance and government response, so that people have the information they need to take action to improve their own communities.

- Building Strong State and Tribal Partnerships: EPA shares accountability with States and Tribes for protecting the environment and public health. With the current economic challenges, it is important that EPA and its partners work efficiently and effectively to do the most we can with the resources we have. At the same time, OECA will strengthen oversight of States that implement federal environmental programs, and support States that take strong enforcement action to protect their citizens by making sure that we hold all States to a comparable standard.

OECA's overall enforcement goals for FY 2012 are to:

- Aggressively go after pollution problems that make a difference in communities. EPA will use vigorous civil and criminal enforcement that targets the most serious water, air and chemical hazards; and advance environmental justice by protecting vulnerable communities.
 - Clean water
 - The Clean Water Act action plan commits EPA to revamp enforcement and work with permitting to focus on the biggest pollution problems, such as
 - Getting raw sewage out of the water
 - Cutting pollution from animal waste
 - Reducing polluted storm water runoff
 - Assure clean drinking water for all communities, including in Indian country
 - Clean up great waters that matter to communities, e.g, Chesapeake Bay
 - Clean air
 - Cut toxic air pollution in communities
 - Reduce air pollution from largest sources, including coal-fired power plants, cement, acid and glass sectors
 - Climate and clean energy
 - Assure compliance with Greenhouse Gas Reporting Rule
 - Encourage greenhouse gas emission reductions through settlements
 - Target energy sector compliance with air, water and waste rules
 - Protect people from exposure to hazardous chemicals
 - Prevent releases of hazardous chemicals that threaten public health or the environment
 - Press for prompt cleanup of hazardous sites in communities, ensuring that the polluter pays
 - Reform chemical management enforcement and reduce exposure to pesticides, focusing on specific areas aimed to help achieve clean water, clean air, and climate and clean energy, and to protect people from exposure to hazardous chemicals.
- Reset our relationship with States to make sure we are delivering on our joint commitment to a clean and healthy environment.
 - Shared accountability
 - Make joint progress with States and Tribes toward clean air and water goals, and protection from exposure to hazardous chemicals

- Work toward shared focus on protecting vulnerable communities
- Strengthened oversight
 - Assure strong and effective State enforcement of federal environmental laws
 - Press for consistent enforcement across States and Regions, ensuring fairness and a level playing field
- Establish new model for shared accountability and strengthened oversight, starting with water
 - Build focus on highest priority problems into grants, enforcement and permitting agreements
 - Define clear expectations for state performance
 - Take federal action where minimum expectations are not met
- Improve transparency
 - Make meaningful facility compliance information available and accessible using 21st century technologies
 - Hold government accountable through public information on state and federal performance
 - Promote better federal environmental decisions and public engagement through NEPA

To help implement these enforcement goals, OECA selects a limited number of National Enforcement Initiatives based upon significant environmental risks and noncompliance patterns. In FY 2010, EPA re-examined the existing initiatives to look for opportunities to clarify goals and measures, more accurately identify universes of sources, and, where necessary, to change the focus of an Initiative. In addition, EPA considered candidates for new National Enforcement Initiatives. After consulting with EPA programs and Regions, States, Tribes, and the public, OECA adopted the following National Enforcement Initiatives for 2011 through 2013. More information on each is found in the media sections of this guidance:

- Keeping raw sewage and contaminated stormwater runoff out of our waters
- Cutting animal waste to protect surface and ground waters
- Reducing widespread air pollution from the largest sources, especially the coal-fired utility, cement, glass, and acid sectors
- Cutting toxic air pollution that affects communities' health
- Assuring energy extraction sector compliance with environmental laws
- Reducing pollution from mineral processing operations

Strategies to implement these initiatives are developed by regional and headquarter teams and include goals, measures, and options for innovative approaches.

D. Achieving Compliance for National and Regional Priorities

EPA and states need to consider how to best use the mix of compliance tools to address all the regulated entities contributing to the environmental problem. The strategic use of the tools along with the identification of partners to help implement them will allow for the efficient use of Agency resources and effective approaches to solving large scale issues.

Strategic use of the tools will benefit EPA and states by: 1) targeting limited inspection and enforcement resources on the bad actors; 2) building capacity and coordination across partners; and 3) expanding governments' presence and demonstrating governments' commitment. More information on the use of integrated strategies is found in the Guide for Addressing Environmental Problems: Using an Integrated Strategic Approach (March 2007) <http://www.epa.gov/compliance/resources/policies/assistance/index.html>

Program Reviews

OECA monitors regional and state activities in a set of annual commitments at mid-year and at the end of a fiscal year based upon Region and State results entered in OECA databases, the Annual Commitment System (ACS), and data collected in the implementation of national enforcement initiatives. In addition, OECA senior managers conduct an annual program review of each regional office. The performance expectations and activities outlined in this guidance are the starting point from which headquarters and the regional offices engage to discuss the management of program activities and the distribution of resources. These discussions result in regional commitments for a specific level of activity and an agreed-upon approach between the regions and the national program manager for achieving performance expectations for the fiscal year.

Regional Priorities

EPA Regions may also have priorities that are specific for a particular environmental situation that may not affect other regions. Some problems cross regional boundaries and regions are working together to address them. For example, in response to the President's May 12, 2009, Executive Order 13508—*Chesapeake Bay Protection and Restoration*, Regions 2, 3, 4, and 5 are working with OECA to address nitrogen deposition to the Bay from large industrial air sources of NO_x. The Regions will build on work already begun under the national enforcement initiatives to evaluate the compliance of power plants and other industrial sources in the Chesapeake Bay air shed emitting more than 1000 tons of NO_x per year. Any resulting enforcement actions would seek to achieve significant NO_x reductions through complying actions, as appropriate. In addition, Region 3 will take steps to evaluate the potential impacts on the Bay of ammonia (NH₃) emissions from concentrated animal feeding operations (CAFOs).

E. Cross Cutting Strategies in the FY2011-2015 Strategic Plan

As part of the FY 2011-2015 Strategic Plan, the Agency has identified five cross-cutting fundamental strategies designed to change the way the Agency works and delivers environmental and human health protection. OECA's NPM guidance directly supports three of the five cross-cutting strategies by instructing the regions to undertake activities in FY2012 that contribute to the cross-cutting strategies' goals. Specific examples in the FY2012 guidance include the following:

Expanding the Conversation on Environmentalism

- Data regarding state assessments, priorities and performance under the Clean Water Act (CWA) should be made public, where possible, on a regular basis in a manner easily understood and used by the public;
- Compliance data should distinguish State information from Indian country information;
- Information should be made available to communities, including Native American and Alaskan Natives, who lack access to the internet;
- Criminal Enforcement program will continue to develop its use of new outreach methods such as Facebook, Twitter and mobile applications to encourage the public's reporting of potential violations and to provide leads through the fugitives website <http://www.epa.gov/fugitives/>.

Strengthening State, Tribal and International Partnerships

- Regions will continue to implement the CWA Action Plan in FY2012 by collaborating with states to address NPDES permitting, compliance monitoring, and enforcement activities, including work-sharing;
- A majority of program narratives in the FY2012 guidance contain specific activities regarding state relationships;
- Regions should consult, as appropriate, with potentially impacted tribal governments when conducting inspections and addressing noncompliance at tribal and non-tribal facilities in Indian country.

Working for Environmental Justice (EJ) and Children's Health

- Regions are directed to use the Agency's environmental justice tools and methodologies to focus enforcement and compliance efforts in communities overburdened by exposure to environmental risks, including urban minority and low-income communities, as well as those with greater concentrations of sensitive populations.
- Specific OECA EJ performance expectations are discussed in Section II of this guidance.

F. Significant Changes from FY2011

The Office of Enforcement and Compliance Assurance's FY 2012 guidance continues to focus on the Administrator's and Assistant Administrator's goals, and on aligning enforcement and compliance priorities with those of the other EPA national program managers. As in FY 2011, the FY 2012 guidance is organized to describe the specific expectations for Regions that implement the Assistant Administrator's priorities and, explains how the enforcement program supports the priorities of other EPA national programs. There are some notable changes in specific programs contained within this guidance and can be summarized as follows:

Clean Water Action Plan: The FY12 guidance contains more specific instructions for the regions and states on how to implement the Clean Water Action Plan such as replacing existing paper reporting with electronic reporting, creating a new compliance paradigm,

retooling key NPDES permitting and enforcement activities, and conducting comprehensive and coordinated permitting, compliance, and enforcement programs.

Wetlands Program: The FY12 guidance sets expectations for the regions to participate in a Section 404 Enforcement Strategy pilot program to improve coordination and communication between EPA and the Corps of Engineers to improve management of the wetlands protection program.

Oil Spills Prevention: In light of the events of the British Petroleum oil spill, the FY12 guidance has been expanded to provide more detailed instructions on the compliance and enforcement activities of an effective oil spill program.

Safe Drinking Water Program – In FY12, regions will be expected to use the timely and appropriate requirements of the enforcement response plan (ERP) as the basis for meeting the drinking water annual commitment. This is a change over last year’s approach which used historical Significant Noncompliance (SNC) rates to set numeric targets.

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Program – Each year regions are asked to place special emphasis on key focus areas within the FIFRA program. In FY12, an optional focus area has been included to provide flexibility to the regions on where to focus their efforts. This flexibility allows for more opportunities to support the Office of Chemical Safety and Pollution Prevention’s program priorities.

G. Contacts

For general questions or comments on the *OECA National Program Managers Guidance* or our Annual Commitments please contact:

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SECTION I: OECA GUIDANCE DEVELOPMENT AND FEEDBACK PROCESS

OECA has structured the NPM Guidance to focus on the performance expectations of the national enforcement program in terms of 1) achieving the Enforcement Goals, 2) making progress in attaining compliance within the national enforcement initiative areas and 3) supporting the EPA program offices in achieving their environmental and public health goals. EPA will post the FY 2012 NPM draft Guidance to allow Regions, States, Tribes, and others to review and comment on the draft. In the past, OECA has received comment from Regions, States, Tribes, and other stakeholders. OECA will respond to the comments and incorporate changes, as needed, in the final documents. The final guidance and a Response to Comments Summary will be posted on the Internet showing the action taken in the final guidance as a result of comments.

SECTION II: SPECIFIC ENVIRONMENTAL JUSTICE PROGRAM PERFORMANCE EXPECTATIONS

OECA plays a dual role in setting performance expectations for environmental justice. First, OECA oversees national and regional enforcement programs. In this role, OECA ensures that facilities in communities overburdened by environmental problems are complying with the law. OECA aggressively applies regulatory tools to protect vulnerable communities, enlists partners to meet community needs, and fosters community involvement in EPA's decision-making processes by making information available.

Second, OECA is the National Program Manager for the Environmental Justice (EJ) Program. The EJ Program facilitates headquarter and regional efforts to achieve measurable environmental or public health benefits/results for communities overburdened by environmental problems.

OECA and Region 5, as Lead Region for FY2011-2013, are implementing the Strategies and Activities outlined in Advancing Environmental Justice through Enforcement and Compliance (EJ 2014 Plan), one of the five cross-cutting areas identified for Agency-wide action in EPA's Plan EJ 2014. OECA's goals under this Plan are to fully integrate consideration of EJ concerns into the planning and implementation of program strategies, case targeting strategies, and development of remedies in enforcement actions to benefit these communities. OECA also plans to accelerate efforts to communicate more effectively with vulnerable and overburdened communities about enforcement actions and program activities.

OECA has developed five major strategies for Advancing Environmental Justice through Enforcement and Compliance:

1. Advance EJ goals through selection and implementation of National Enforcement Initiatives.
2. Advance EJ goals through targeting and conduct of compliance and enforcement actions.
3. Use enforcement and compliance tools to advance EJ goals in Regions' geographic initiatives to address overburdened communities.

4. Seek remedies in enforcement actions to benefit vulnerable and overburdened communities and address EJ concerns.
5. Communicate with affected communities and the public regarding EJ concerns and the distribution and benefits of enforcement actions, as appropriate.

For FY2012, OECA will address our EJ 2014 Plan goals through the following performance expectations.

1. Advance EJ goals through Selection and Implementation of National Enforcement Initiatives

OECA will look for opportunities to address EJ concerns as it implements the National Enforcement Initiatives for FY2011-13. A “Strategy Implementation Team,” consisting of OECA headquarters and regional representatives, is responsible for developing implementation strategies and performance measures for each of the National Enforcement Initiatives. Each initiative’s strategy will consider how EJ concerns can be addressed in carrying out its activities, *e.g.* by giving priority in case selection to overburdened EJ communities affected by the pollution problems the Agency seeks to address in each of the initiatives. In developing remedies in initiative’s enforcement cases, the Agency will seek judicial and administrative remedies that will reduce or eliminate pollution that may have a disproportionate impact on minority, low-income or indigenous populations.

2. Advance EJ Goals Through Targeting and Conduct of Compliance and Enforcement Actions

OECA and the Regions will place a high priority on addressing EJ concerns as the specific targeting and case selection strategies for both National Enforcement Initiative and other enforcement cases are developed. As discussed above, the Strategic Implementation Teams for each Initiative have identified opportunities to protect and benefit EJ and overburdened communities when selecting and developing specific cases to achieve the Initiative goals. For example, when selecting specific CAFO facilities for enforcement action, priority should be given to facilities that are impacting or threatening the drinking water supplies of poor rural communities. OECA and the Regions will also give specific consideration and priority to EJ and overburdened communities when selecting enforcement actions to address other important compliance problems, regardless of whether they are part of an Initiative. For example, in selecting enforcement actions to address violations of drinking water standards, we will give high priority to addressing violations at water supply systems that serve poor and tribal communities, as well as children, one of our most vulnerable populations.

In FY2012, OECA will continue to use the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) or similar screening tools/approaches and other information, *e.g.*, community input, to support targeting of enforcement actions and to enhance performance reporting. In addition to OECA’s efforts to develop screening tools for use in the enforcement and compliance program, the Agency’s EJ Screening workgroup is undertaking a larger effort to develop guidance on identifying areas of potential EJ concern as a separate effort under EPA’s Plan EJ 2014. It will be important to ensure that OECA’s guidance to enforcement case teams is consistent with the approaches developed by the Agency-wide EJ Screening Committee. Therefore, upon completion of the Screening

Committee's work, OECA will review its guidance to ensure that it is consistent with the final Agency decisions based on the EJ Screening Committee's work.

- Regions should begin to track and report on enforcement actions and results that impact communities with potential EJ concerns, in ICIS, according to the instructions developed by the EJ Tracking and Reporting Workgroup.

3. Use Enforcement and Compliance Tools to Advance EJ Goals in Regions' Geographic Initiatives to Address Overburdened Communities

Regions have developed, and continue to develop, integrated strategies to focus on particular geographic areas with overburdened communities disproportionately affected by environmental problems. In 2008-2011, each Region identified a "Showcase Community" to focus efforts to address EJ concerns. The Regions used integrated strategies that included the full range of EPA's tools, including EPA program activities, grants, and enforcement and compliance assurance activities. The Regions will ensure that they use their enforcement and compliance assistance tools effectively to identify and address environmental problems in areas of potential EJ concern that are caused or made worse by violations of federal environmental laws. For example, EPA Regions 3, 4 and 5 are leading a geographic enforcement initiative focused on Huntington Port, which was selected in part because screening analysis indicated a high potential for EJ concerns. This initiative incorporates enforcement and compliance assistance to reduce pollution and increase compliance. It also includes workshops to build the community's capacity to help ensure the long-term protection of the environment and public health.

- Regions, together with state and other partners as appropriate, should evaluate facility compliance in EJ communities selected for strategic focus. These evaluations should be targeted using the best available data and methods in light of the overall objectives of EPA's enforcement and compliance assurance work. In this way, community-focused initiatives will complement the national enforcement initiatives and other sector-based and program-specific enforcement activities, meeting OECA's goal of strategically using limited enforcement resources to address the most significant issues first.
- Regions should tailor compliance evaluation and enforcement actions as part of integrated strategies to maximize EPA's ability to gain environmental benefits in overburdened communities. For example, this could include use of multi-media inspections and/or process inspections to comprehensively address potential impacts from violations at a given facility.
- OECA and the Regions will consider and use compliance assistance activities to effectively reach large numbers of small sources with environmental violations that have significant local impacts on EJ communities. Compliance assistance tools are particularly appropriate, at least as an initial compliance effort, when widespread violations are found among small businesses, which often have limited resources and less ability than major industrial facilities to understand and comply with the requirements of federal environmental regulations. EPA and states have often been successful in improving small businesses' compliance with environmental regulations through focused outreach and education efforts.

4. Seek Remedies in Enforcement Actions to Benefit Vulnerable and Overburdened Communities and Address EJ Concerns.

OECA and the Regions, and the Environmental Enforcement Section of the U.S. Department of Justice (DOJ) are jointly heightening their focus in civil enforcement cases on potential options to obtain meaningful environmental benefits to specific overburdened communities impacted by violations of federal environmental laws. These efforts go beyond traditional injunctive relief to stop illegal pollution, to provide for mitigation of the environmental harm caused by illegal pollution and, where appropriate and agreed to by defendants, Supplemental Environmental Projects (SEPs) to provide benefits to communities. For example, in a case involving illegal discharges of pollutants from a facility that damaged a tribal fishing area, the relief ordered (in addition to stopping the illegal discharges) included restocking the fishing ground. In air pollution, EPA has been successful in obtaining SEPs from defendants to retrofit diesel school buses, to reduce the air pollution that children are exposed to. We will continue and accelerate these types of efforts to reduce pollution burdens that have a disproportionate impact on minority, low-income or indigenous populations.

In addition to the benefits that can be obtained for overburdened communities through judicial and administrative enforcement actions, there may be other, parallel opportunities in a particular situation and community to obtain additional benefits for the community through cooperation with other federal agencies, state or local governments, and/or the business community. For example, the U.S. Department of Housing and Urban Development may be able to provide housing assistance or other community benefits in a “brownfields” area where EPA has taken enforcement action to clean up environmental contamination. State or local governments may have projects or grant funding that can be used to improve the community’s infrastructure or environment in an area that is also the focus of EPA compliance or enforcement action. In situations where air emissions from multiple industrial facilities continue to adversely affect community health despite their compliance with emission limitations, some business communities may be willing to work together to take voluntary action to further reduce the emissions that adversely affect the community. EPA will encourage its staff and managers to look for and act upon these opportunities

5. Communicate with Affected Communities and the Public Regarding EJ Concerns and the Distribution and Benefits of Enforcement Actions, As Appropriate

OECA and the EPA Regions with the Department Of Justice will increase their efforts to communicate with affected communities and the public about enforcement strategies and actions that may affect vulnerable and overburdened communities. We recognize that communities have a legitimate need to be informed and to understand the federal government’s enforcement activities to protect their environment, and to have their voices heard when solutions are being considered to redress environmental problems caused by violations of federal environmental laws that affect their community. In this part of OECA’s action plan for Plan EJ 2014, we commit to increase our outreach to communities and to provide more information about environmental problems caused by failure to comply with federal environmental laws, our efforts to address those problems, and available judicial and

administrative solutions to those problems that can address the communities' concerns and needs.

At the same time, it is important for communities to understand the legitimate and essential need to protect the confidentiality of enforcement activity when a case is under development. This is essential to assure that effective enforcement, and its ultimate benefits for the community, will not be undermined and adversely affected by premature disclosure of confidential enforcement information. While this consideration will necessarily limit the amount and kind of information that EPA is able to share with the community at various stages of enforcement activity, we are committed to sharing as much information as possible, as early and often as possible, to enable communities to be informed and to have their voices heard in the determination of appropriate resolutions for violations of federal environmental laws that affect communities.

While increased communication efforts are important, it is no less important to receive input from communities on potential violations. We will continue to invite tips and complaints, including through such means as OECA's on-line reporting badge and the EPA fugitives webpage.

- OECA and the Regions will review their enforcement dockets to identify communities with EJ concerns that could benefit from enhanced communication and consultation regarding enforcement activities, and provide the communities with additional information (consistent with the confidentiality requirements needed to protect the integrity of enforcement actions).
- OECA and the Regions will also provide opportunities for communities to provide input on EJ concerns and remedies to be sought in enforcement actions that affect their communities. This information will be provided through EPA's website, local information repositories, and other appropriate means.
- OECA and the Regions recognize that EPA's enforcement processes, *e.g.* the enforcement processes concerning hazardous waste site cleanup that affect communities with EJ concerns, are often complicated and can be difficult for the public to understand and to follow. To increase communities' ability to understand our enforcement processes, we will continue to improve the accessibility to communities of the information provided on EPA's website, develop and make available fact sheets to better explain EPA's enforcement process at particular sites, and update for internal EPA use a compendium of "best practices" that will encourage and facilitate EPA employees' efforts to make enforcement information more available to the public.

EPA's enforcement actions frequently provide significant benefits to vulnerable and overburdened communities, including reduction of air or water pollution, cleanup of toxic and hazardous waste, and additional community benefits such as diesel bus retrofits and other benefits made available through Supplemental Environmental Projects (SEPs). However, the community is able to appreciate these benefits only to the extent that it is aware of them. Therefore, OECA and the Regions will continue accelerating our efforts to communicate, through press releases, our website and other means, the benefits of our enforcement actions for

vulnerable and overburdened communities, consistent with the memo, “*Characterizing the EJ Benefits from Pollution Reductions Achieved in Enforcement Actions....*”, issued by OCE in 2011.

SECTION III: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS FROM AIR POLLUTION

A. Clean Air Act (CAA)

OECA addresses air pollution problems through the following CAA programs:

- Part 60 - New Source Performance Standards (NSPS)
- Part 61- National Emission Standards for Hazardous Air Pollutants (NESHAP)
- Part 63 -Maximum Achievable Control Technology (MACT)
 - Maximum Achievable Control Technology (MACT) – major sources
 - Generally Available Control Technology (GACT) – area sources
- New Source Review/Prevention of Significant Deterioration (NSR/PSD)
- Enforcement of State Implementation Plans and plans developed and approved under Section 111(d)
- Title V Operating Permits
- Part 82-Title VI Stratospheric Ozone Protection
- Section 112(r) Prevention of Accidental Releases
- Title II (Emission Standards for Moving Sources)
- Section 129 Solid Waste Combustion

1. Implement National Enforcement Initiatives

The relevant FY 2011 – 2013 national enforcement initiatives for CAA programs are:

Cutting Toxic Air Pollution that Affects Communities' Health: In 1990, Congress identified 189 hazardous air pollutants (HAPs) that present significant threat to human health and have adverse ecological impacts (<http://www.epa.gov/ttn/atw/188polls.html>). The pollutants are known or suspected to cause cancer and other serious health effects, such as reproductive or birth defects. The threats posed by HAPs may be particularly significant for communities overburdened by exposure to environmental risks, including urban minority and low-income communities, as well as those with greater concentrations of sensitive populations. The CAA and EPA's regulations impose strict emission control requirements (known as "Maximum Achievable Control Technology" or "MACT") for these pollutants, which are emitted by a wide range of industrial and commercial facilities. For FY2011-13, EPA will target and reduce emissions of toxic air pollutants in three areas where the Agency has determined there are high rates of noncompliance: (A) leak detection and repair; (B) waste gas flares; and (C) excess emissions, including those associated with startup, shut down and malfunction. Particular emphasis will be given to emissions at sources that have a significant impact on air quality and health in communities. As part of this effort, OECA will utilize innovative monitoring and evaluation techniques and partner with EPA's Office of Air and Radiation (OAR) and Office of Research and Development.

Reducing Widespread Air Pollution from the Largest Sources, Especially the Coal-fired Utility, Cement, Glass, and Acid Sectors: The NSR/PSD requirements of the CAA require

certain large industrial facilities to install state-of-the-art air pollution controls when they build new facilities or make “significant modifications” to existing facilities. However, many industries have not complied with these requirements, leading to excess emissions of air pollutants such as sulfur dioxide, nitrogen oxides and particulate matter. These pollutants can be carried long distances by the wind and can have significant adverse effects on human health, including asthma, respiratory diseases and premature death. These effects may be particularly significant for communities overburdened by exposure to environmental risks and vulnerable populations, including children. In recent years, EPA has made considerable progress in reducing excess pollution by bringing enforcement actions against coal-fired power plants, cement manufacturing facilities, sulfuric and nitric acid manufacturing facilities, and glass manufacturing facilities. However, work remains to be done to bring these sectors into compliance with the CAA and protect communities burdened with harmful air pollution. Therefore EPA will continue this work as a National Enforcement Initiative for FY2011-2013.

Assuring Energy Extraction Sector Compliance with Environmental Laws: As the nation expands its search for new forms and sources of energy, there is an urgent need to assure that we develop “clean energy” sources that protect our air, water and land. Some energy extraction activities, such as new techniques for gas extraction, pose a risk of pollution of air, surface waters and ground waters if not properly controlled. For example, an unprecedented acceleration of natural gas leasing and development has led to a significant rise in the level of air pollution throughout the intermountain West. Drilling and fracking activities have led to concerns about ground water pollution and the safety of drinking water supplies in various parts of the country. To address these emerging problems, OECA’s energy extraction initiative will focus on efforts to assure that natural gas extraction activities are complying with federal requirements to prevent pollution of our air, water and land. This initiative will be undertaken in particular areas of the country where natural gas extraction activities are concentrated, and the focus and nature of our enforcement activities will vary with the type of activity and pollution problem presented.

As of January 2, 2011, EPA also began regulating greenhouse gases (GHGs) under its NSR program. EPA will endeavor to ensure these pollutants are also addressed in any process changes or modification that gives rise to NSR requirements.

2. Link with Top Office of Air and Radiation Priorities

OECA addresses top OAR priorities in the following ways:

- **Greenhouse Gases (GHG):** OECA continues to support the Agency’s climate strategy by recognizing reductions of global warming pollution in settlements of enforcement actions. OECA and OAR will implement a National Implementation Strategy for the Greenhouse Gas Reporting Program. The National Implementation Strategy will provide guidance to Regions on compliance monitoring and assistance activities, in order to establish the appropriate enforcement response to support the integrity of the GHG monitoring and reporting system. As noted above, OECA will also ensure that sources undertaking certain process changes or modification that result in significant GHG emissions go through proper New Source Review permitting.

- Air Toxics in Communities: OECA will address this Agency priority through the 2011 – 2013 National Enforcement Initiative - cutting toxic air pollution that affects communities' health. OECA also is working closely with OAR and ORD to reduce toxic air pollution through standards, permitting, compliance monitoring and assistance activities, and enforcement, especially in communities overburdened by environmental problems. This initiative represents a new model for programmatically addressing the cross-cutting nature of Environmental Justice issues by systematically linking OECA enforcement efforts with permits, rules and other regulatory tools administered by the Agency's media programs.

3. Aggressively Go After Pollution Problems That Make a Difference in Communities

Air pollution moves with the wind and is therefore of great concern to communities both near its source and remotely located. Air pollutants that are emitted closer to the ground, for example as a result of equipment leaks or low stack height, can cause disproportionate exposure for neighboring communities. In industrial areas, these communities frequently have significant low income and minority populations. Serious health effects caused by air pollution include difficulty in breathing, exacerbation of respiratory and cardiac conditions, and cancer.

Regions and delegated state/local agencies and Tribes should:

- Implement programs in accordance with existing national compliance and enforcement policy and guidance (e.g., the CAA Stationary Source Compliance Monitoring Strategy (CMS); the CAA National Stack Testing Guidance, the Timely and Appropriate Enforcement Response to High Priority Violations (HPV Policy); and the Area Source Implementation Guidance to address significant air pollution problems that adversely affect impacted communities by reducing such pollution from the largest sources with special attention directed toward reducing toxic air pollution. Regions should work with delegated agencies/tribes to ensure they are familiar with national guidance, aware of the flexibilities within the guidance, and implement their programs consistent with the guidance.
- Use targeting tools to identify the most important air pollution problems and the most serious violations, including use of screening tools/approaches, such as the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT), community input, and other information to support compliance monitoring activities.
- Have a process for identifying, targeting, evaluating, and responding to illegal activities affecting priority air pollution problems.
- Work together to initiate civil and criminal enforcement actions, as appropriate, and whenever necessary to protect communities by addressing and ultimately resolving serious air violations in order to bring sources into compliance.
- Evaluate all violations, determine an appropriate response, and take timely and appropriate actions against facilities determined to have High Priority Violations (HPV).
- The Regions and delegated agencies should enter data on all federally-reportable violations, not just HPVs, consistent with the 'Clarification Regarding Federally-Reportable Violations for Clean Air Act Stationary Sources' ("2010 FRV Clarification") issued on March 22, 2010.
- Negotiate settlements and track compliance with consent decrees and administrative orders and take all necessary actions to ensure compliance with the terms of federal enforcement

actions. Utilize assistance, incentives, monitoring, and enforcement tools and other approaches that achieve widespread compliance. The appropriate combination and sequencing of such compliance assurance tools should be considered when determining the best approach for addressing environmental problems and returning sources to compliance.

In addition, the Regions should:

- Continue any on-going investigations and initiate new ones, as appropriate. Activities reported as investigations should meet the definition of an investigation as provided in the CMS and minimum data requirements. Regions must use the Air Facility System (AFS) in reviewing and approving state implementation plans (SIPs) as well as to track the compliance status of sources within various regulatory programs under the Clean Air Act. Both initiated and completed investigations are to be reported in AFS.
- Review Title V permits consistent with national guidance and ensure the delegated agencies/tribes are reviewing the certifications consistent with the CMS. Regions also should ensure that Title V permits do not shield sources subject to a pending or current CAA enforcement action or investigation, and that draft Title V permits include appropriate placeholder language for the applicable requirement at any affected units. Regions should ensure that consent decree requirements, including required schedules of compliance are incorporated into underlying federally enforceable non-Title V and Title V permits.
- Include evaluations of the proper use and disposal of ozone-depleting chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), halon fire suppressants and other ozone depleting substances (ODS) as part of routine full compliance evaluations (FCEs)/partial compliance evaluations (PCEs) to the extent the regulations apply.
- Inspect federal facilities and initiate enforcement actions to address non-compliance at federal facilities. Implement the 1997 clarified penalty authority against federal agencies for CAA violations in appropriate circumstances.
- Perform CAA section 112(r) inspections at regulated facilities in the Region, including high risk facilities. A high risk facility is one which meets one or more of the following criteria: 1) facilities who have reported RMP worst-case scenario population that exceeds 100,000 people; 2) any RMP facility with a hazard index greater than or equal to 25; and/or; 3) facilities that have had one or more significant accidental releases within the previous five years. (Note: facilities that have only program 1 processes are not considered high risk). Inspections at high-risk facilities should also include an evaluation of compliance with applicable EPCRA and CERCLA requirements.
- Evaluate facilities that experience significant chemical accidents to determine compliance with CAA sections 112(r)(1) and (7) and an appropriate enforcement response for any violations.
- Conduct CAA section 112(r) inspections in accordance with the recently issued “Guidance for Conducting Risk Management Program Inspections under Clean Air Act Section 112(r)” which updated and superseded the “Guidance for Auditing Risk Management Plans/Programs under Clean Air Act Section 112(r) of August 1999. This document establishes final EPA policy on involvement of facility employees and employee representatives in EPA and delegated agency on-site compliance inspections as provided for in CAA section 112(r)(6)(L).

- Focus on identifying RMP non-filers and initiating enforcement as appropriate. Headquarters will continue to provide support in this area.
- Work to bring 100% closure of any self-disclosure received by the Region.
- Settle or litigate cases filed in years prior to FY2012.
- Exercise authority in accordance with the 1008 Civil Monetary Penalty Inflation Adjustment Rule and the Amendments to the CAA Civil Penalty Policy.
- Ensure compliance with environmental statutes in Indian country unless and until a Tribe obtains primacy.

COMMITMENT CAA04: Number of compliance evaluations to be conducted at majors, 80% synthetic minors, and other sources (as appropriate) by the Regions. [Note: Break out evaluation projections by source classification and by compliance monitoring category (FCE, PCE, and Investigations). In the comment section, provide the number of federal facility FCEs, PCEs and investigations. Projected investigations under this commitment are those investigations initiated by the Regions for the air enforcement program outside of the National Enforcement Initiatives, and identified by the air program (e.g., MACT, NSPS).

4. Reset Our Relationships with States

The Regions should work with the state/local agencies and Tribes to identify priorities and align resources to implement the above commitments. This includes:

- Holding annual planning meetings with senior federal and state management to discuss air quality standards, permitting, and enforcement when developing program goals and annual monitoring and enforcement work plans. Convening routine and regular (several times per year) meetings with senior state management to assess progress in how the State has been performing overall in its implementation of the program. These meetings may be held in person or through conference calls or other venues, as appropriate. Regular frequency of these meetings is strongly suggested as a best practice for ensuring progress in meeting goals.
- Where States are not meeting performance expectations, Regions should take enforcement actions to address serious violations. Regions should focus oversight resources to the most pressing performance problems in States and should work to demonstrably improve State performance through these actions. Regions need to take action when necessary to communicate which issues need attention to achieve the goals of the federal environmental laws and ensure a level playing field between States. Regions are directed to take federal action in the absence of appropriate enforcement response by the States.
- Ensuring delegated agencies implement compliance monitoring and enforcement programs in accordance with national guidance/policy (e.g., the CAA CMS; HPV Policy; CAA National Stack Testing Guidance; Area Source Implementation Guidance). Regions should monitor the level and quality of efforts undertaken by the delegated agencies to ensure strong enforcement of environmental laws. Enforcement actions, whether taken by the Regions, delegated states/locals, or Tribes should be timely, appropriate, and accurately reported.
- Negotiating facility-specific CMS plans with all delegated agencies. Throughout the year, Regions are to be evaluating progress and working with delegated agencies to revise such CMS plans as necessary.

- Having frequent (at least monthly) discussions with delegated agencies to ensure consistent implementation of the HPV Policy.
- Implementing the State Review Framework for the CAA Program and ensuring progress with corrective actions identified in the SRF reports.
- Consulting with Tribes on the central role that enforcement and compliance plays in EPA's direct implementation program and oversight of approved tribal programs.

COMMITMENT CAA06: Ensure delegated agencies implement their compliance and enforcement program in accordance with the CAA CMS and have a negotiated facility-specific CMS plan in place. Regions are to provide the number of FCEs at majors and 80% synthetic minors to be conducted by individual state/local agencies to demonstrate program implementation consistent with CMS. However, if a delegated agency negotiates with a Region an alternative CMS plan, this Commitment should reflect the alternative plan. [Note: Break out evaluation projections (e.g., FCEs; PCEs included in alternative plan) by source classification]. Prior to approving an alternative plan, Regions should consult with the Office of Compliance (OC) and provide OC with information on how the state/local agency compliance monitoring air resources will be redirected and the rationale for making the change.

5. Improve Transparency

The Regions should:

- Work with the state/local agencies and Tribes to verify that their compliance and enforcement data is input into the Air Facility System (AFS), the national repository for air stationary source compliance monitoring and enforcement data.
- Enter complete, accurate, and timely data consistent with the AFS Information Collection Request (ICR) and Agency policies. Agreements with delegated agencies to provide complete, accurate, and timely data should be incorporated in documents such as memorandum of understanding (MOU), State Enforcement Agreements (SEAs), Performance Partnership Agreements (PPAs)/ Performance Partnership Grants (PPGs) or Section 105 grant agreements.
- Work with EPA Headquarters to modernize AFS.

COMMITMENT CAA07: The Regions and delegated agencies should enter 100% of MDRs in AFS consistent with Agency policies, including the 2010 FRV Clarification, and the AFS ICR. The reporting of such complete, accurate, and timely data by delegated agencies should be reflected in written, up-to-date agreements with the Regions. If the Region is responsible for entering data for a delegated agency or Tribe, the Region should identify the delegated agency or Tribe.

6. Relevant Policies and Guidances

Additional information about OECA's CAA programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/caa/index.html>
<http://www.epa.gov/compliance/civil/caa/index.html>

List of relevant CAA policies and guidance:

- The Air Facility System Business Rules Compendium
www.epa.gov/compliance/resources/policies/data/systems/air/afsbusinessrulescompendium.pdf
- The Air Facility System Minimum Data Requirements
www.epa.gov/compliance/resources/publications/data/systems/air/mdrshort.pdf
- CAA Stationary Source Compliance Monitoring Strategy
www.epa.gov/compliance/resources/policies/monitoring/cmstrategy.pdf
- CAA National Stack Testing Guidance
www.epa.gov/compliance/resources/policies/monitoring/caa/stacktesting.pdf
- Area Source Rule Implementation Guidance
<http://www.epa.gov/compliance/resources/policies/monitoring/caa/areasource.pdf>
- The Timely and Appropriate Enforcement Response to High Priority Violations
www.epa.gov/compliance/resources/policies/civil/caa/stationary/issue-ta-rpt.pdf
- The Timely and Appropriate Enforcement Response to High Priority Violations Workbook
www.epa.gov/compliance/resources/policies/civil/caa/stationary/hpvmanualrevised.pdf
- CAA Stationary Source Civil Penalty Policy
www.epa.gov/compliance/resources/policies/civil/caa/stationary/penpol.pdf
- CAA Section 112(r) Combined Enforcement Policy
<http://epa.gov/compliance/resources/policies/civil/caa/stationary/caa112r-enfpol.pdf>
- Guidance for Conducting Risk Management Program Inspections under Clean Air Act Section 112(r) www.epa.gov/oem/docs/chem/audit_gd.pdf
- Civil Penalty Policies <http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/>

SECTION IV: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS FROM WATER POLLUTION

A. Clean Water Act (CWA)

OECA addresses water pollution problems resulting from noncompliance with our nation's environmental statutes and regulations, including the following CWA programs:

- National Pollutant Discharge Elimination System (NPDES) Program (including general and individual permits from sources such as municipal and industrial wastewater treatment facilities and their collection systems, concentrated animal feeding operations (CAFOs), industrial storm water, and vessels).
- Pretreatment Program
- Biosolids/ Sludge Program
- CWA Section 404 (Wetlands) Program
- CWA Section 311 (Oil Pollution Act, including the Spill Prevention Control and Countermeasures (SPCC) Program)

1. Clean Water Act Action Plan

OECA together with EPA Regions, States and the Office of Water continue to implement the CWA Action Plan (“the Action Plan”) issued in October 2009. Pursuant to the Action Decision Document, issued February XX, 2011, EPA is making four fundamental changes to revamp the NPDES permitting, compliance and enforcement program to better address today's serious water quality problems:

1. Replace existing paper reporting with electronic reporting, automated compliance evaluations and improved transparency.
2. Create a new paradigm for regulations and permits to compel compliance via public accountability, self-monitoring, electronic reporting and other methods.
3. Address this decade's serious water pollution problems by re-tooling key NPDES permitting and enforcement practices, and continue to vigorously enforce the Clean Water Act.
4. Conduct comprehensive and coordinated permitting, compliance, and enforcement programs to improve state and EPA performance in improving water quality.

These elements are consistent with the Assistant Administrator's goals for the compliance and enforcement program, listed on pages 6 and 7 of this Guidance.

States and regions should participate in workgroups tasked with designing these changes as well as use/implement the new tools, pilot projects, policies and regulations as appropriate. A list of the workgroups and pilot projects along with the lead OECA contacts for these efforts will be available in March 2011 on the CWA Action Plan OTIS site. Regions should notify OECA leads of their interest in working on these projects. **For FY12, Regions should participate in the following CWA Plan efforts already under development:**

- Where appropriate, and in accordance with any subsequent guidance, enforcement actions should include requirements for all data to be submitted electronically, whether required by permit or enforcement actions.
- Where appropriate, and in accordance with any subsequent guidance, compliance assistance, monitoring and enforcement personnel should provide relevant feedback to permitting offices regarding permit prioritization and modifications to consider when permit is renewed.
- Where the regions have direct implementation responsibilities, utilize multi-sector general permit (MSGP) violation and benchmark data to support monitoring and enforcement. The Water Enforcement Division is working with the Office of Water to obtain these data and make them available to regions in a usable format. The data will also be used to inform decisions on development of model documents such as 308 information requests, administrative orders, and administrative penalty orders.
- Regions should investigate the Clean Water Act (CWA) compliance status of surface mining facilities within each Region, including mountaintop removal mining operations. Regions should evaluate the compliance status of such facilities with respect to both NPDES permitting requirements as well as 404 permitting requirements. If CWA violations are identified, enforcement action should be taken where appropriate.
- Actively participate in CWA Action Plan pilots (as developed in FY2011 for implementation in FY2012) to address effluent violations reported on DMRs using new strategies and tools, such as expedited administrative enforcement actions and electronic compliance assistance. Consider pilots or innovate approaches to deal with more routine, paperwork violations.
- Actively market and implement the use of NetDMR or other e-DMR tools by permittees for the electronic transfer of Discharge Monitoring Reports (DMR) to ICIS-NPDES, supported by use of the National Environmental Information Exchange Network (Exchange Network), by all of their NPDES permitted facilities.
- Regions should support additional CWA Action Plan commitments as further developed. Refer to CWA Action Plan OTIS site.
- Regions should broaden the scope of targeting, monitoring and enforcement beyond traditional NPDES majors, utilizing new targeting tools as developed.

2. High Priority Performance Goal

For FY 2012, pursuant to direction from the Office of Management and Budget, each federal department and agency must develop and report on a set of High Priority Performance Goals (HPPGs) that will measure performance for a limited set of high priority activities. EPA has developed a HPPG that measures EPA's actions to improve water quality through implementation of the Clean Water Act Action Plan. For FY 2012, OECA has the following HPPG:

- Increase pollutant-reducing enforcement actions in waters that don't meet water quality standards, from an FY2009 baseline of 32% to a target of XX% in FY2012.

This HPPG aligns with the Clean Water Act Action Plan goal of targeting enforcement to serious water pollution problems. The HPPG is not based on expected increases in enforcement actions, but rather a greater emphasis on taking enforcement actions against facilities that discharge pollutants into waters not achieving water quality standards for those standards. The

enforcement actions are concluded judicial and administrative enforcement cases that result in a reduction in the relevant pollutants. The HPPG is limited to EPA actions only because at present OECA does not have the necessary information to report on state enforcement actions. For purposes of the HPPG, we define waters as not meeting water quality standards as broader than the impaired waters list. See the November 11, 2010 “Guidance on Implementing FY2011 High Priority Performance Goals” for more details on how to target and report for this measure.

OECA will continue to improve GIS-based targeting tools to link relevant water quality information to facility location, discharges and compliance information as part of developing the next generation of analytical tools under the Action Plan.

Continuing in FY 2012, OECA will be tracking the performance of Regions to target enforcement actions on facilities discharging into waters not achieving water quality standards.

COMMITMENT CWA 10: Regions should focus their CWA enforcement work towards meeting the national target of XX% for concluding federal judicial and administrative enforcement actions resulting in a reduction of pollutants that pertain to facilities discharging into waters that do not achieve water quality standards. The Regions should report their data per the November 2010 guidance issued by OECA, and any subsequent updates issued for FY2012.

3. Implement National Enforcement Initiatives

The relevant FY 2011 – 2013 national enforcement initiatives for CWA programs are:

Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation’s Waters: EPA will continue its enforcement focus on reducing discharges of raw sewage and contaminated stormwater into our nation’s rivers, streams and lakes. Older urban areas in particular have aging sewer systems that are not designed to handle heavy rainfall and snowfall, in addition to growing urban populations and industrial discharges. As a result, untreated sewage too frequently overflows from sewers into waterways, or backs up into city streets or basements of homes. Raw sewage contains pathogens that threaten public health, leading to beach closures and public advisories against fishing and swimming. This problem particularly affects older urban areas, where minority and low income communities are often concentrated. In addition, stormwater runoff from urban streets and construction sites carries sediment, metal, oil and grease, acid, chemicals, toxic materials and industrial waste into surface waters. Many cities use rivers as the source of their drinking water, and contaminants in the water increase the difficulty and expense of treating the water for drinking water use. The Clean Water Act requires municipalities to treat sewage before it is discharged and to control contaminated stormwater discharges, but many municipalities are not complying with these requirements. EPA’s enforcement efforts in recent years have resulted in agreements by many cities to remedy these problems, but the problem remains in many other cities. This National Enforcement Initiative will focus on reducing discharges from combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), and municipal separate storm sewer systems (MS4s) in FY2011-13, by obtaining cities’ commitments to implement timely, affordable solutions to these problems, including increased use of green infrastructure and other innovative approaches. Regions should consider and promote the opportunity to utilize green infrastructure controls in municipal enforcement actions.

Green infrastructure approaches have the potential to help reduce and/or eliminate CSOs and SSOs in a cost effective manner while providing a variety of environmental and community benefits, including improved water and air quality, increased energy efficiency, green spaces and economic development. For these reasons, EPA is committed to the incorporation of green infrastructure projects into municipal settlements where appropriate.

Preventing Animal Waste from Contaminating Surface and Ground Waters: Concentrated Animal Feeding Operations (CAFOs) are defined as agricultural operations where animals live in a confined environment (see 40 CFR Section 123). CAFOs can contain large numbers of animals, feed, manure, dead animals and production operations on a small land area. The animals generate a large amount of manure, which typically is held in lagoons or spread on nearby fields. If not properly controlled, manure can overflow from lagoons or run off from the fields into nearby surface waters or seep into ground water, carrying disease-causing pathogens, nutrients, or other contaminants into the water. This contaminates both surface waters and ground waters that may be used as drinking water sources and harms fish and other aquatic species in surface waters.

Several studies have found high concentrations of CAFOs in areas with low income and minority populations. This is typical in many rural areas of the country where livestock facilities are located. Children in these areas may be particularly susceptible to potential adverse health effects through exposure to contaminated surface waters or drinking water from contaminated ground water sources. The Clean Water Act prohibits the discharge of these pollutants into surface waters, and EPA's regulations require larger CAFOs to have permits (which impose control requirements) if the waste produced by animals on the farm will run off into surface waters. However, many CAFOs are not complying with these requirements, so EPA will continue to strengthen its enforcement focus on these facilities, and those in priority watersheds. For FY2011-13, OECA will focus primarily on existing large and medium CAFOs identified as discharging without a permit. In addition, each Region will consider a variety of factors to prioritize CAFO – related activities (i.e., compliance assistance, monitoring and enforcement). These factors include identifying watersheds where CAFOs are negatively affecting water quality, proximity to vulnerable communities, strengths and challenges of state CAFO programs, as well as other considerations. In addition, each Region will consider a variety of factors to prioritize CAFO – related activities (i.e., compliance assistance, monitoring and enforcement). These factors include identifying watersheds where CAFOs are negatively affecting water quality, proximity to vulnerable communities, strengths and challenges of state CAFO programs, as well as other considerations.

Assuring Energy Extraction Sector Compliance with Environmental Laws: As the nation expands its search for new forms and sources of energy, there is an urgent need to assure that we develop “clean energy” sources that protect our air, water and land. Some energy extraction activities, such as new techniques for gas extraction, pose a risk of pollution of air, surface waters and ground waters if not properly controlled. For example, an unprecedented acceleration of natural gas leasing and development has led to a significant rise in the level of air pollution throughout the intermountain West. Drilling and fracking activities have led to concerns about ground water pollution and the safety of drinking water supplies in various parts of the country. To address these emerging problems, OECA's energy extraction initiative will focus on efforts to

assure that natural gas extraction activities are complying with federal requirements to prevent pollution of our air, water and land. This initiative will be undertaken in particular areas of the country where natural gas extraction activities are concentrated, and the focus and nature of our enforcement activities will vary with the type of activity and pollution problem presented. Implementation plans are being developed for the Municipal, CAFO, and Energy Extraction Initiatives that will include final goals and measures, and guidance on implementation. Region-specific commitments for activities to support the goals and measures will be negotiated through the ACS process.

4. Link with Top Office of Water Priorities

OECA addresses top Office of Water priorities for the CWA in the following ways:

- Restoring and Protecting Urban Waters: As part of aggressively going after pollution that matters to communities, OECA's enforcement and compliance will be particularly focused on protecting communities by getting raw sewage out of the water, cutting pollution from animal waste, and reducing polluted stormwater runoff.
- Focusing Efforts in Key Geographic Areas: OECA is improving protection of the Chesapeake Bay as part of the Chesapeake Bay Compliance and Enforcement Strategy (<http://www.epa.gov/compliance/civil/initiatives/chesapeakebay.html>)
- Strengthening Protections for Our Waters: OECA is improving protection of water through the Clean Water Act Action Plan (<http://www.epa.gov/compliance/civil/cwa/cwaenfplan.html>).
- Chesapeake Bay: Regions should refer to the Chesapeake Bay Compliance and Enforcement Strategy implementation plan for details about expectations and commitments for storm water, waste water, and CAFOs. Implementation plans include goals and measures with targets for accomplishing activities to support each, e.g., 3 MS4 audits per year. (Note: CAFO commitments are not yet finalized.)

5. Aggressively Go After Pollution Problems That Make a Difference in Communities

Communities across the country depend on clean water as a source of drinking water, a habitat to support healthy ecosystems and as a resource for recreation and fishing. They expect protection from exposure to water contaminated by raw sewage, animal waste and pollutants in urban storm water run-off.

Direct exposure to raw sewage and associated high levels of disease-causing organisms can be a particular problem for communities located in older urban areas where the aging municipal wastewater infrastructure may be failing or unable to handle the demands of a growing urban population. When pipes break, equipment fails or the system exceeds capacity, untreated wastewater flows into waterways, homes and city streets, most significantly exposing the community to pathogens. Urban water bodies can also be assaulted by large volumes of

uncontrolled polluted storm water from streets, parking lots, and commercial and industrial businesses. Many of these older urban areas include minority and low income communities.

Exposure to animal waste from concentrated animal feeding operations may particularly affect low income and minority populations in rural areas. Water bodies polluted by the waste can cause human illness after swimming or wading and result in contaminated fish and shellfish. This is a particular problem with respect to subsistence fishing, which is most frequent in minority and low income populations.

OECA, together with the Office of Water and state water control agencies will work to identify at-risk waters and use their appropriate regulatory tools, including setting strong water quality standards, issuing protective NPDES permits and addressing serious violations through effective enforcement to ensure water quality protection and restoration.

A. CWA NPDES Program

Regions in non-authorized States and Indian country, and authorized States and Tribes, should:

- Target to identify the most serious sources of pollution and the most serious violations. Use the new tools developed pursuant to the CWA Plan in FY2011 such as available ambient monitoring data, pollutant loadings, and GIS, to target the most significant sources of pollutants on those water bodies and watersheds including those that are not meeting water quality standards as broadly defined in the HPPG Guidance.
- Develop annual compliance monitoring plans that take advantage of the flexibility available in the National Pollutant Discharge Elimination System Compliance Monitoring Strategy for the Core Program and Wet Weather Sources (issued October 17, 2007), along with additional approaches identified in the CWA Action Plan, to target inspections aimed at identifying and addressing serious water quality problems where NPDES compliance and enforcement tools will be effective in addressing the pollution problem.
- Evaluate all violations to determine seriousness and determine an appropriate response. Facilities in significant noncompliance (SNC) should be acted on, along with sources with serious effluent limit violations, unpermitted discharges, systemic reporting problems or violations at facilities with potential to seriously impact to water quality.
- Initiate and complete civil enforcement actions, where appropriate to address serious violations contributing to a community's water quality problems. This includes judicial and administrative actions. Ensure compliance with consent decrees and administrative orders.
- Implement targeted "real time" (quick response) enforcement activities to address violations impacting communities' waters, such as violations at concentrated animal feeding operating. OECA will provide additional training and guidance on this approach in FY11.

- Utilize assistance, incentives, monitoring and enforcement tools to address serious noncompliance problems causing water quality problems in targeted communities and watersheds.

In addition, Regions should:

- Implement CWA specific geographic compliance and enforcement strategies, as appropriate for their Region, including CWA Action Plan pilots, the Chesapeake Bay Enforcement Strategy, and other region-specific geographic initiatives.
- Routinely review all DMRs and non-compliance reports received for compliance with permit requirements where the Region directly implements the program. (Note that Regions may accomplish this review through a routine screen of the PCS or ICIS-NPDES data and reviewing the DMRs themselves as necessary.)
- Where the Region has direct implementation responsibilities, they should inspect and audit pretreatment POTWs and Industrial Users (IUs) to evaluate the effectiveness of the regulatory authorities pretreatment program, either in conjunction with other compliance inspections at major and minor POTWs such as compliance evaluations (CEIs) or separately.
- Where the Region has direct implementation responsibilities, they should inspect biosolids/sludge facilities to evaluate the permittee's compliance with sludge monitoring, record keeping and reporting, treatment operations, and sampling and laboratory quality assurance, either in conjunction with other compliance inspections at major and minor POTWs such as compliance evaluations (CEIs) or separately.
- Use all available data to benchmark and monitor state performance using data from federal and state data systems, permitting and enforcement performance reviews, and other audit or evaluation reports. These include State Review Framework reviews, Office of Water Permit Quality Reviews, regular EPA/State meetings to review performance, state data not entered into national databases and GAO and/or IG reviews of state performance. In FY2011, EPA developed an integrated and streamlined NPDES enforcement and permitting oversight review process, issued guidance and provided training to EPA Regions. In FY12, EPA Regions will implement integrated NPDES enforcement and permitting oversight reviews.
- Where States are not meeting performance expectations, Regions should take action to object to permits that are not protective of water quality and enforce to address serious violations. Regions should focus oversight resources on the most pressing performance problems in States which had been identified through permitting and enforcement reviews. Regions and States must work together to demonstrably improve state performance. Guidance will be made available under the Clean Water Act Action Plan to further clarify expectations.
- Coordinate, as appropriate, with the Coast Guard and other federal agencies which have significant roles in addressing spills, and follow all related Memoranda of Agreement including the MOU for the Vessels General Permit.
- Continue implementing the Federal Facility Integrated Strategy on Stormwater.
- Encourage States that are currently using the NPDES Permit Compliance System (PCS) to prepare to migrate to the modernized data system, ICIS-NPDES. The batch data flow capability from States to ICIS-NPDES through EPA's National Environmental

Information Exchange Network is currently under development and is scheduled to be implemented in three distinct releases. The first release, scheduled for February 2011, will provide functionality for the transmittal of Permit and Facility information. The second release, scheduled for January 2012, will provide functionality for the transmittal of Inspection information. The final release, scheduled for March of 2013, will provide functionality for the transmittal of remaining NPDES data families to include Enforcement Actions, Single Event Violations, and Program Reports. Regions should support their States as they move to ICIS-NPDES.

COMMITMENT CWA07: By December 31, 2011, provide a specific NPDES Compliance Monitoring Strategy (CMS) plan for each State in the Region. The plan should provide universe information for the CMS categories; sub-categories covered by the CMS and combined EPA and State expected accomplishments for each category and subcategory. The plan should identify trade-offs made among the categories utilizing the flexibility designed into the CMS policy to target the most significant sources with potential to impact water quality. At end of year provide for each State a numerical report on EPA and state inspection plan outputs, by category and subcategory. To increase the transparency of NPDES inspection data, OECA will work with Regions and State associations to develop formats for releasing inspection data on CMS implementation performance on a state-by-state basis.

B. CWA Section 404 – Discharge of Dredge and Fill material (Wetlands)

Regions should:

- Coordinate, as appropriate, with other federal agencies (e.g., U.S. Army Corps of Engineers, Natural Resources Conservation Service (NRCS), Fish and Wildlife Service, etc.) which have significant roles in wetlands protection through the use of memoranda of understanding and memoranda of agreement or other appropriate mechanisms.
- Meet with Corps Districts on an annual basis to establish regional priorities and communicate priorities to OECA;
- Review field level agreements with Corps Districts, and revise to make them consistent with Section 404 Enforcement Strategy, as appropriate;
- Begin to use the new national tracking system if it is ready for implementation in FY 2011, or modify the existing data base, in consultation with HQ, to more completely and transparently track EPA 404 enforcement actions, including referrals from the Corps of Engineers and the identification of repeat and flagrant violators;
- Develop methods to effectively leverage other program resources to more systematically identify potential serious Section 404 violations and take appropriate enforcement response to address these violations. Share effective techniques with OECA for use in developing the national wetlands enforcement strategy;
- Implement existing Regional cross agency 404 enforcement training programs between state and federal agencies and begin implementing new efforts identified by HQ to cross-train inspectors and to train other federal and state agencies and stakeholders to identify CWA 404 violations;
- The Section 404 Enforcement Strategy will be piloted during 2011 - 2012, and the Regions are expected to work with OECA in implementing the strategy;

- When regions have access to DARTER, use compliance data in DARTER to determine whether potential defendants are flagrant violators or violations are repeat;
- Cross train other inspectors (Section 402 and Section 311) to recognize Section 404 violations.

C. CWA Section 311 – Oil Pollution Act

Regions should:

- Participate in multi-regional enforcement cases to address spills from inter-state pipelines and others, such as production facilities, on a company-wide basis. Cases will include company-wide injunctive relief requirements to prevent future spill violations at all facilities of the owner or operator.
- Participate in multi-regional enforcement cases to address federal response plan (FRP) violations at facilities owned or operated by the same company. Cases will include company-wide injunctive relief requirements to improve facility response planning and implementation at all facilities of the owner or operator.
- Investigate and develop enforcement actions to address noncompliance with EPA product schedule requirements for use of dispersants and other substances during emergency responses.
- Investigate and develop enforcement actions to address spill, spill prevention, and facility response planning violations at offshore platforms within EPA jurisdiction.
- Conduct inspections and investigations as needed to confirm violations or develop enforcement cases.
- Routinely review inspection reports and other available data to identify noncompliance and develop enforcement actions. Check compliance monitoring at regulated facilities to ensure that spill prevention and facility response plans are in place, meet the regulatory requirements, and are implemented in accordance with regulatory requirements.
- Routinely review spill notification reports to the National Response Center, pipeline spill reports to the Pipeline and Hazardous Materials Safety Administration, spills reported to states and other available sources to identify spill violations. Issue CWA 308 information requests to confirm violations and identify causes of the spills. Take appropriate enforcement action to address spills of oil and hazardous substances that have occurred, to include penalties and injunctive relief to prevent future violations from similar causes across all facilities of the same owner or operator.
- As the deadline to comply with revised spill prevention requirements passes, develop strategies to target facilities to address noncompliance with spill prevention requirements.
- Participate in OECA-led coordination and strategy meetings, as appropriate.

6. *Reset Our Relationships with States*

Every Region and State, working together, should conduct a CWA annual planning process that brings the different components of the regional and state NPDES program (water quality standards and assessment, permitting and enforcement) all to the table together, identifies and discusses national, regional, and state priorities versus available resources at both the state and federal levels, and results in collaborative annual work plans that use all available mechanisms to

get work done, such as federal and state work-sharing, innovative approaches to monitoring facilities or addressing violations, etc.

Regions should:

- Hold annual planning meetings with each State to develop collaborative annual work plans. Submit summary report to headquarters by December 31, 2011.
- Convene routine and regular meetings between the Region and State to discuss progress towards meeting annual permitting and enforcement commitments, and how the State has been performing overall in the NPDES program.
- Where States are not meeting performance expectations, Regions should take action to enforce to address serious violations. Regions should focus oversight resources to the most pressing performance problems in States and should work to demonstrably improve state performance through these actions. Regions need to take action when necessary to communicate what things need attention to achieve goals of the federal environmental laws and ensure a level playing field between States. Where States are not taking enforcement actions in response to serious violations, Regions are directed to take federal action.
- Conduct a sufficient number of oversight NPDES inspections to ensure the integrity and quality of each State or Tribe with primacy compliance monitoring programs. The Regions have flexibility to determine the appropriate number of oversight inspections needed to ensure proper state inspection conduct and documentation. Oversight inspections are not "joint" inspections. Oversight inspections can be conducted by accompanying state inspectors during inspections, or conducting a separate inspection at the same facility at a later date to verify the same findings.
- Implement the State Review Framework (SRF) for the NPDES program in conjunction with permit quality reviews and assure implementation associated with corrective actions identified in the SRF reports.
- Consider the following information when conducting state program oversight:
 - number of SNCs identified (and percent of universe), especially those related to effluent exceedance or illegal discharges by state and by region
 - number (and percent) addressed in a timely and appropriate manner
 - results of SRF and permit quality reviews and progress in correcting identified issues.
- Consult with Tribes on the central role that enforcement and compliance plays in EPA's direct implementation program and oversight of approved tribal programs.

COMMITMENT CWA09: Regions should submit summaries of the collaborative EPA/State annual work planning process addressing NPDES permitting, compliance monitoring, and enforcement activities, including work-sharing, to the Office of Compliance and the Office of Wastewater Management by December 31, 2011 for FY 2012 activities.

7. Improve Transparency

- Data regarding state assessments, priorities and performance under the CWA should be made public by the Regions and Headquarters, where possible, on a regular basis in a manner easily understood and used by the public.

- If data systems are not able to support reporting at end-of-year FY 2011, the Regions should manually report using instructions specified in the multi-program fiscal year reporting guidance memorandum.
- Regions should work with the States and Tribes to verify that their compliance and enforcement data is input into national databases.
- Compliance monitoring activities conducted pursuant to the goals in CMS and the state-specific plans should be reported into the appropriate national information system, either PCS or ICIS-NPDES, in accordance with documents which establish data requirements and reporting timeframes for those systems. States must ensure that all required compliance and enforcement data is input or transmitted to the national databases. EPA encourages States to expand their use of the national databases to include compliance and enforcement data that pertains to the entire NPDES universe
- Regions should review reporting practices to ensure that oil and hazardous substance spills are timely and accurately reported to the National Response Center (NRC)
- Regions should make information available to communities, including Native American and Alaskan Natives, who lack access to the internet.

8. *Relevant Policies and Guidances*

Additional information about OECA's Clean Water Act programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/cwa/index.html>

<http://www.epa.gov/compliance/civil/cwa/index.html>

B. Safe Drinking Water Act (SDWA)

OECA addresses drinking water pollution problems through the following SDWA programs:

- Public Water System Supervision (PWSS) Program
- Underground Injection Control (UIC) Program

EPA's focus on regulated drinking water systems, including those in Indian country, protects the public from the potential acute and chronic health effects of drinking water that fails to comply with the SDWA. The Enforcement Targeting Tool (ETT), which identifies those Public Water Systems (PWSs) that have the most serious unresolved drinking water violations, and the Enforcement Response Policy (ERP), together establishes EPA's expectations of how primacy authorities are to address drinking water violations and return violating PWSs to compliance.

The ETT assigns to each drinking water violation a numerical value weighted for its severity, and applies a formula that generates a total score for each PWS with unresolved violations. Because violations of health-based standards and major violations of monitoring and reporting requirements for acute contaminants present the most serious risks to the public's health, violations of these types are assigned the highest scores. Major monitoring and reporting violations related to chronic contaminants, minor monitoring and reporting violations, and public notification violations are assigned lower scores. The higher a PWS's total ETT score, the more serious is its overall noncompliance.

The ERP provides that all drinking water violations at PWSs are to be resolved and that PWSs are returned to compliance. Additionally, the ERP directs that if a PWS reaches an ETT score of 11 or higher before its violations are resolved, that PWS will be considered a priority system that must either return to compliance or receive formal enforcement action within six months of having reached a score of 11. By focusing resources on PWSs with the most serious unresolved violations, the ERP helps ensure those PWSs return to compliance in a timely manner.

1. Link with Top Office of Water Priorities

OECA addresses top Office of Water priorities for the SDWA in the following ways:

- Safeguarding Public Health: As part of aggressively going after pollution that matters to communities, OECA will use all enforcement and compliance tools to assure clean drinking water, which is so essential to community health, with continued attention to clean drinking water in schools, to protect children's health, and in Indian country.

2. Aggressively Go After Pollution Problems That Make a Difference in Communities

The ETT and ERP apply equally to EPA direct implementation and implementation by states and tribes with primacy. EPA's goal is to ensure that the drinking water delivered in Indian country is at least as safe as the drinking water delivered to the rest of the American public.

The ETT's scoring formula focuses enforcement resources on those systems with health-based violations, those with major monitoring and reporting violations, and those that show a history of violations across multiple rules. Its system-based methodology is intended to ensure consistency and the integrity of the PWSS national enforcement program while providing increased protection for the public.

While Regions, states and tribes with primacy will work to resolve all SDWA violations, the ETT lists PWSs with unresolved violations in order of descending scores. This identification of those PWSs with the most serious noncompliance problems allows the primacy authority to establish priorities to ensure the worst violators are addressed first, and, with the further identification of priority systems, ensures timely action is taken to return serious violators to compliance.

Primacy agencies should initiate return to compliance efforts at all systems as soon as practicable after noncompliance is identified, with the long-term goal of preventing ETT scores from reaching 11. Efforts should also be made to ensure sustained compliance as well as a timely return to compliance.

COMMITMENT SDWA02: Regions, as the primacy authority (and states and tribes with primacy), must commit to meeting the timely and appropriate requirements of the ERP. PWSs whose score have reached 11 or greater must either return to compliance or receive formal enforcement action within six months of having reached a score of 11. While the ERP requires all PWSs with violations be addressed and returned to compliance, the primacy authority will

rely on the PWS scores presented in quarterly ETT reports to prioritize the specific systems to be addressed.

3. *Reset Our Relationships with States*

Regions are responsible for working with their states, territories and the Navajo Nation in an oversight capacity to ensure that the ETT and ERP are implemented as intended. OECA will engage with Regions on a regular basis to ensure that Regions are directly implementing the program in Indian country, Wyoming, the District of Columbia, Guam, American Samoa, the Virgin Islands, and Puerto Rico effectively and applying the ETT and ERP as intended, to discuss progress, identify and resolve obstacles, and share best practices in implementing the program by all partners.

Convene quarterly meetings between the Region and state/territory to discuss progress returning systems to compliance and performance overall in implementation of the program. These meetings may be held in person or through conference calls or other venues, as appropriate. The quarterly frequency is a minimum and EPA strongly suggests more regular communication as a best practice for ensuring progress in meeting goals.

Where states/territories are not meeting performance expectations, Regions should take action to ensure serious violations are addressed. Regions should focus oversight resources on the most pressing performance problems in states/territories and should work to improve performance through these actions

Consistent with EPA's *Policy on Consultation and Coordination with Indian Tribes*; OECA's *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* (January 17, 2001); and *Questions and Answers on the Tribal Enforcement Process* (April 17, 2007), the Regions should consult, as appropriate, with potentially impacted tribal governments when conducting inspections and addressing noncompliance at tribal and non-tribal PWSs in Indian country.

4. *Improve Transparency*

OECA headquarters will report on progress in returning systems to compliance in its annual national compliance report posted on the EPA website at <http://cfpub.epa.gov/compliance/resources/reports/accomplishment/sdwa/>

Compliance and enforcement data for all drinking water systems will be made available to the public through the Enforcement and Compliance History Online website.

5. *Relevant Policies and Guidances*

Additional information about OECA's SDWA and tribal programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/sdwa/index.html>

<http://www.epa.gov/compliance/civil/sdwa/index.html>

http://www.epa.gov/compliance/resources/policies/civil/sdwa/drinking_water_erp_2009.pdf

SECTION V: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS FROM WASTE, TOXICS, AND PESTICIDES POLLUTION

A. Resource Conservation and Recovery Act (RCRA)

OECA addresses waste pollution problems through the following RCRA programs:

- Hazardous Waste Subtitle C Program
- Underground Storage Tank Subtitle I program
- Imminent and Substantial Endangerment

Readers are urged to review the RCRA Compliance Monitoring Strategy for detailed information about goals and measures, policies which allow flexibility from OECA's expectations, program oversight, and other aspects of the RCRA compliance monitoring program.

1. Statutory and Regulatory Requirements

RCRA dictates minimum inspection frequencies for treatment, storage, and disposal facilities TSDF annually for (TSDFs) operated by state/local governments, and biennially for non-governmental TSDFs. The first two commitments apply to TSDFs owned or operated by non-governmental entities, and to TSDFs owned but not operated *by* state/local/tribal governments. RCRA03 applies to TSDFs operated by state/local/tribal governments. These inspections should be Compliance Evaluation Inspections (CEIs).

COMMITMENT RCRA01: Project by State, and Indian country where applicable, the number of operating TSDFs, to be inspected by the Region during the year². Regions must commit to inspect at least two (2) TSDFs in each State or Indian country unless OECA approves a deviation from this requirement. For example, deviations are given for states with small universes where it might not make sense for a Region to inspect two TSDFs per year. Financial responsibility is an important component of the RCRA core program and should be included as part of the inspection of each TSDF (although the financial responsibility reviews do not have to occur at the same time nor be conducted by the same people who conduct the field inspections).

COMMITMENT RCRA01.s: Project by State the number of operating TSDFs to be inspected by the State during the year.

- The RCRA CMS establishes minimum annual inspection expectations for TSDFs: The inspections for this commitment should be CEIs. Only one inspection per facility counts towards this coverage measure.

COMMITMENT RCRA03: Inspect each operating TSDF *operated* by States, Tribal governments or local governments.

² Currently there is only one TSD in Indian country.

COMMITMENT RCRA04: Project by State and Indian country the number of financial assurance mechanisms to be reviewed by the Region during the year. Regions must commit to review financial test and/or corporate guarantee submissions for compliance with the closure and post-closure regulations at a number of facilities at least equal to the Region's commitment under RCRA01. As an alternative, Regions may choose to conduct formal financial record reviews for facilities that did not have a financial assurance review during the FY 2005-FY 2010 as part of the national enforcement priority. The financial test/corporate guarantee compliance evaluations or financial record reviews may occur at the same facilities being inspected under RCRA01 or at different TSDFs.

The financial test/corporate guarantee compliance evaluations should take place within 90 days after the facility's annual submission is received.

- Regions should ensure continued review of financial test/corporate guarantee submissions since they present the greatest risk and are the most commonly used instruments.
- Regions are expected to focus on reviewing the universe of TSDFs not formally evaluated during the national priority, and on conducting in-depth reviews of financial test/corporate guarantee submissions.
- Regions are to coordinate with States to conduct these financial assurance reviews.

2. Implement National Enforcement Initiatives

The relevant FY 2011 – 2013 national enforcement initiative for RCRA programs is:

Reducing Pollution from Mineral Processing Operations: Mining and mineral processing facilities generate more toxic and hazardous waste than any other industrial sector, based on EPA's Toxic Release Inventory. Many of these facilities have impacted surrounding communities and continue to pose high risk to human health and the environment. For example, 95 mining and mineral processing sites are on the Superfund National Priorities List and more sites are being added every year, including operating facilities. EPA has spent over \$2.4 billion to address the human health and environmental threats to communities, such as exposure to asbestos and lead poisoning in children, as a result of mining and mineral processing. In some cases, EPA had to relocate families because of these threats, especially those to children in low income communities. EPA has inspected 65 mining and mineral processing sites that pose significant risk to communities and found many to be in serious non-compliance with hazardous waste and other environmental laws. Contamination of groundwater and potable water has occurred at many sites, sometimes requiring alternative drinking water supplies or removal of lead-contaminated soil from residential yards. In other cases, toxic spills into waterways from mining and mineral processing caused massive fish kills and impacted the livelihood of low income communities. Some workers at mining and mineral processing facilities have been exposed to spills and mismanagement of toxic and hazardous waste. EPA will continue its

enforcement initiative to bring these facilities into compliance with the law and protect the environment and nearby communities.

OECA has not finalized the goals and annual commitments for the National Enforcement Initiatives, but it is expected there will be approximately 13 mineral processing inspections required for 2012 nationally.

3. Link with Top OSWER Priorities

OECA addresses top OSWER priorities for RCRA in the following ways:

- Recycling, Waste Minimization and Energy Recovery: OECA maintains an overall enforcement presence in RCRA that supports OSWER in their work.
- Emergency Preparedness, Implementing the EPAct, Response and Homeland Security: OECA maintains an overall enforcement presence in RCRA that supports OSWER in their work.
- Preventing Underground Storage Tank Releases: The RCRA Subtitle I enforcement program is focused on ensuring facilities comply with the UST regulations. These regulations require facilities to monitor UST systems to prevent leaks. OECA's NPM guidance fully supports OSWER's goal of preventing underground storage tank releases through the activities identified in section 4(b).
- Cleaning up Underground Storage Tank Releases: Regions should monitor for compliance with UST regulations. When leaks are found, Regions should assure leaks are addressed as described in the UST Section 4(b) program.

4. Aggressively Go After Pollution Problems That Make a Difference in Communities

a. RCRA Subtitle C Program

Regions and States should inspect pollution problems that matter to communities, and develop enforcement cases that produce significant environmental benefits. Regions, in their oversight and direct implementation roles, and authorized States are expected to follow the guidance in the Compliance Monitoring Strategy for the Resource Conservation and Recovery Act Subtitle C Program (RCRA CMS). To enable States to address environmental problems of concern to communities, States may utilize flexibility in the RCRA CMS to deviate from their large quantity generator (LQG) requirements. RCRA facilities may cause air, surface and groundwater pollution. Because these facilities are frequently associated with industrial operations, surrounding communities are often low income and minority.

Issues of emerging environmental concern to EPA and communities are listed here. These focus areas should be considered a high priority for Regions and States when developing strategies for targeting compliance assurance work. These should also specifically be discussed between

States and Regions when developing plans for respective activities in the Region. The areas of concern are:

- Surface Impoundments: EPA, with support from States, continues to focus on problems associated with illegal disposal of hazardous waste in unlined surface impoundments. There are thousands of industrial surface impoundments across the country, many of which adversely impact communities through air, surface water, and/or groundwater contamination, particularly in the chemical manufacturing and petroleum refining sectors.
- Centralized Waste Treatment Facilities: These facilities conduct treatment of industrial solid waste from third-parties. Through recent inspections, EPA has identified several such facilities that were grossly mismanaging hazardous wastes, and treating and discharging these wastes without permits.
- Hazardous Waste Recycling Facilities: EPA supports the environmentally beneficial recycling of hazardous wastes and secondary materials. However, sham recycling and recycling not done in compliance with RCRA requirements can result in significant adverse impacts to human health and the environment. This area of concern will include a focus on zinc fertilizer manufacturing that uses hazardous waste in the production process.
- Coke Manufacturing: There are approximately 20 coke manufacturing facilities in the United States. EPA has recently inspected and identified multi-media compliance problems at some of these facilities, including the illegal land disposal of hazardous waste. This sector produces several listed and characteristic hazardous waste streams that are excluded from RCRA if recycled without being land disposed. EPA intends to conduct focused inspections within this sector to ensure compliance.
- Waste Analysis Plans at Commercial TSDFs: EPA has conducted sampling at TSDFs to determine if the facilities' waste analysis plans and treatment of the waste were adequate. Based on the results of the sampling, concerns have been identified with the treatment and stabilization techniques and the sampling and analysis of hazardous waste treated to meet the Land Disposal Restriction (LDR) treatment standards for land disposal.
- RCRA Corrective Action: To help achieve the RCRA Corrective Action 2020 Goals, EPA and authorized States should focus enforcement resources on facilities that have not made meaningful progress in achieving remedial objectives, and on financially marginal or bankrupt facilities. Regions should use the prioritization scheme set forth in the National Enforcement Strategy for Corrective Action when assessing EPA-lead facilities and prioritizing facilities for corrective action enforcement.

The Regions should:

- Provide compliance assistance, conduct compliance monitoring, and pursue enforcement to ensure that pollution problems that matter to communities are aggressively addressed.

- Regions and states are encouraged to support the OC's RCRA inspector training development effort.
- Ensure that state and tribal inspectors who inspect on behalf of EPA are trained and credentialed per *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA* (2004).

COMMITMENT RCRA02: Project by State and Indian country, the number of LQGs, including those at federal facilities, to be inspected by the Region during the year. Each Region must commit to inspect at least six (6) LQGs in each State, and 20% of the Region's LQGs in Indian country, unless OECA approves a deviation from this requirement. For example, deviations are given for states with small universes where it doesn't make sense for a Region to inspect 6 LQGs per year. In the Comment Section, provide the number of federal facility LQG inspections.

COMMITMENT RCRA02.s: Project by State the number of LQGs to be inspected by the State during the year. At least 20 percent of the LQG universe should be covered by combined federal and State inspections unless an alternative plan is approved under the RCRA CMS.

The RCRA corrective action financial responsibility measure includes the review of financial test submissions received by the States within each Region. For those States that are not authorized for corrective action, the Regions should be reviewing the financial test submissions as part of EPA's role of implementing and enforcing the corrective action program in unauthorized States. Regions conducting financial test/corporate guarantee reviews for the RCRA Subtitle C closure/post-closure regulatory program may also review any corresponding corrective action submissions as part of the completion of this program measure.

COMMITMENT OSRE04: For 100% of the financial test submissions received each fiscal year for corrective action with cost estimates over \$5 million, determine whether the submission is in compliance. Where the submission is noncompliant, take appropriate enforcement action to address noncompliance (e.g., notice of violation). If possible, return facility to compliance by end of fiscal year.

b. RCRA Underground Storage Tank (UST) Subtitle I Program

A major focus of the RCRA UST program is to maintain an enforcement presence concerning leak prevention, leak detection, corrective action, closure, and financial responsibility violations. EPA is committed to ensuring facilities operate underground storage tanks (USTs) in a manner that is protective of human health and the environment. Agency compliance assurance and enforcement activities will focus on those facilities posing the greatest risk to human health and the environment. Regional enforcement efforts should ensure that owner/operators of RCRA Subtitle I regulated facilities properly prevent and detect releases and take appropriate corrective action when releases occur.

EPA directly implements the UST program in Indian country in coordination with Tribes and tribal consortia because RCRA precludes EPA from authorizing tribal UST programs.

Authorized States have primary responsibility for determining facility compliance, ensuring adequate inspection coverage of the regulated universe, taking appropriate actions in response to non-compliance, and playing a vital role in alerting EPA to regulatory implementation problems.

Generally, federal compliance assurance and enforcement will complement and provide oversight of state activities. Although States with approved programs have primary responsibility for monitoring compliance and initiating enforcement actions against violators of the UST requirements, Regions should inspect and initiate federal enforcement cases to supplement and support state efforts. Federal involvement or support can provide significant benefits by addressing noncompliance from a national or corporate-wide perspective, facilitating compliance efforts involving multiple States and/or Regions, and enhancing public awareness in a broader, more national forum.

Regions should:

- Target UST inspections that will produce the greatest environmental and human health benefits (e.g., leak prevention, leak detection, corrective action, and financial responsibility). Factors to consider in identifying facilities for inspection under the UST program include:
 - Owners and operators of USTs located in Indian country;
 - Owners and operators with UST facilities in multiple states;
 - Mid-level distributors with multiple UST facilities;
 - Problem noncompliers; (i.e.; repeat violators; owners/operators who fail to cooperate in an effort to return to compliance);
 - Owners and operators of facilities with USTs that endanger sensitive ecosystems or
 - sources of drinking water; and
 - Corporate, government-owned, and federal central fueling facilities.
- Regions are expected to take enforcement actions and assess penalties, as appropriate, to ensure optimum deterrence effect and compliance impact. Regions should also consider use of the delivery prohibition, when appropriate, as an effective tool to promptly address significant noncompliance.
- Focus on developing large complex cases involving noncompliance on a corporate-wide basis or noncompliance in multi-state operations.
- Focus on comprehensively evaluating corporate compliance and fully developing cases involving noncompliance on a corporate-wide basis or noncompliance that occurs at facilities located in multiple states.

5. Reset Our Relationships with States

RCRA compliance monitoring is a collaborative effort between OECA, Regions, and authorized States. Each of these entities performs complementary but distinct roles. OECA provides national program leadership, and oversight of Regional and state programs, aimed at increasing program effectiveness and national consistency.

Regions and authorized states should:

- Ensure the most serious environmental problems caused by noncompliance are addressed. Regions should accomplish this primarily through annual planning with States, State program oversight, strategic and targeted federal inspections and enforcement in States, and through direct implementation in Indian country. Regions provide capacity-building support to States on complex or multi-state issues; and consult with States to identify compliance problems that may warrant areas of national focus. Regions should meet and consult regularly (for example, quarterly) with each authorized State to maintain communication on progress towards meeting annual permitting and enforcement commitments, enhancing program performance and ensuring fairness and a level playing field.
- Take action to ensure serious violations are addressed where states are not meeting performance expectations. Regions should focus oversight resources on the most pressing performance problems in States and should work to demonstrably improve state performance through these actions. Regions need to take action where States are not addressing serious violations to communicate necessary improvements to state programs in order to achieve goals of the federal environmental laws and ensure a level playing field between States.
- States are encouraged to report to the regions and OECA, any patterns of noncompliance they may identify through their inspections or other activities.
- Consistent with EPA's Policy on *Consultation and Coordination with Indian Tribes*; *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (January 17, 2007)*, the Regions should consult, as appropriate, with potentially impacted tribal governments when conducting inspections and addressing noncompliance at tribal and non-tribal facilities in Indian country.

RCRA Corrective Action

RCRA corrective action is implemented by EPA and 43 authorized States and territories. The National Enforcement Strategy for Corrective Action (NESCA) encourages EPA and States to continue to work in partnership to achieve the 2020 Corrective Action goals and emphasizes the need for close communication and coordination between EPA and States to meet this goal. Regions should be working closely with their State partners to implement NESCA. NESCA provides guidance to Regions and States for targeting enforcement efforts and to address special considerations that arise in the enforcement arena, such as ensuring enforceable requirements and deadlines in permits and orders are clearly identified and included, dealing with companies having financial difficulties, using CERCLA authorities, ensuring institutional controls are effective and enforceable and long-term stewardship requirements are met, and increasing the transparency and community involvement of enforcement efforts. OECA will continue to provide training to both Regions and States on how to review financial test and corporate guarantee submissions for compliance. After 18 months of implementing NESCA, EPA and its State partners plan to assess the contribution of NESCA in achieving progress toward the 2020 Corrective Action Goals. Necessary modifications to NESCA will be made and additional tools and guidance documents may be developed as a result of this assessment.

6. *Improve Transparency*

At the end of the fiscal year or when otherwise available, OECA will make essential information, such as the following, available to the public via OECA's web page, or by other means:

- Results of the State Review Framework;
- Results of the Annual Commitment reporting;
- Results and highlights of compliance assistance efforts; and
- Highlights of significant EPA and State enforcement actions.
- Regions are expected to use their own comparable existing mechanisms to inform the public. States are encouraged to do likewise.
- Compliance data should distinguish State information from Indian country information.
- Information should be made available to communities, including Tribes, who lack access to the internet.

7. *Relevant Policies and Guidances*

Additional information about OECA's RCRA programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/rcra/index.html>

<http://www.epa.gov/compliance/civil/rcra.html>

<http://www.epa.gov/compliance/cleanup>

B. Toxic Substances Control Act (TSCA)

The Toxic Substances Control Act of 1976 provide OECA with authority to enforce reporting, record-keeping and testing requirements; and restrictions relating to chemical substances and/or mixtures; and the production, importation, use, and disposal of specific chemicals, including lead-based paint, polychlorinated biphenyls (PCBs), and asbestos.

OECA addresses toxics problems through the following TSCA programs:

- TSCA New and Existing Chemicals Programs (note: the term New and Existing Chemicals Programs describes TSCA section 4, 5, 6, 8, 12 and 13), Subchapter I, otherwise known as "core TSCA."
- TSCA Lead-based Paint Risk Reduction Program
- TSCA Legacy Chemicals Program (PCBs and Asbestos Program which includes Worker Protection Standards, the Model Accreditation Plan Program and the Asbestos Hazard Emergency Response Act (AHERA))

1. *Link with Office of Chemical Safety, Pesticides, and Prevention's Top Priorities*

OECA addresses the Office of Chemical Safety, Pesticides, and Prevention (OCSPP) priorities for TSCA programs in the following way:

- **Reduce Lead Risks:** OECA provides overall direction to Regions and states to enforce all of the lead-based paint rules using an integrated strategy with a significant focus on the Renovation, Repair and Painting Rule.

- **Assess and Reduce Risks from New and Existing Chemicals:** OECA focuses on compliance with TSCA Section 5 with a particular focus on nanotechnology, short chained and other chlorinated paraffins, and other priority or Action Plan chemicals.

2. Aggressively Go After Pollution Problems That Make a Difference in Communities

TSCA's enforcement programs are significant to communities because they address chemicals that can pose serious risks to human health. Lead-based paint is particularly dangerous to children. Exposure may cause reduced intelligence, learning disabilities, behavior problems and slowed physical development. Because lead-based paint is found in pre-1978 buildings, it is more common in low income and minority communities. Asbestos in schools, if not properly managed, can expose children, teachers and other school staff to harm that may not manifest for years. PCBs bioaccumulate and thus cause a variety of adverse health effects. Asbestos and PCBs are generally found in older buildings. Additionally, PCBs are generally found in older transformers, capacitors and some hydraulic equipment. Inappropriate abatement and disposal of asbestos and PCBs can be dangerous.

A national strategy for the TSCA program is currently being developing in FY2011 that will include monitoring and enforcement expectations, including ACS commitments, for regions in FY2012. The strategy will cover all aspects of the TSCA compliance and enforcement program.

a. TSCA New and Existing Chemicals Programs

The TSCA New and Existing Chemicals Program is exclusively a Federal program that provides for review of the toxicity of chemicals prior to their manufacture and importation to prevent unreasonable risk to human health and the environment. Regions implementing the New and Existing Chemical Program should:

- Focus TSCA compliance activities on chemical manufacturing, distribution, processing, use, or disposal in emerging technologies and/or use of new chemicals.
- Through inspections and enforcement actions as appropriate, focus on ensuring facility compliance with:
 - TSCA 5 - new chemicals requirements such as Pre-manufacturing Notice (PMN); Significant New Use Rules (SNUR's); Low Volume Exemptions (LVE's), and on chemicals of concern including nanotechnology (especially carbon nanotubes), short chained and other chlorinated paraffins, and other priority or Action Plan chemicals
- Target existing chemical reporting and record keeping requirements such as s TSCA 8(c),(d) and(e) and the Inventory Update Rule;
- Evaluate and prioritize tips and complaints and follow-up as appropriate. Targeting for future inspections based on credible leads from tips and complaints should also be considered. Regions implementing this program are also expected to follow-up on all referrals received from headquarters, States, Tribes, and the public. Regions not implementing this program should refer tips and complaints the Waste and Chemical Enforcement Division within the Office of Civil Enforcement.

- Obtain information through inspections and/or subpoena as appropriate. Initiate civil enforcement actions, as appropriate, to bring facilities into compliance.

b. TSCA Lead Risk Reduction Program

Recent data show that tremendous progress has been made in the continuing effort to eliminate childhood lead poisoning as a public health concern. Based on CDC data, EPA has measured progress by tracking reductions in the number of children with elevated blood lead levels of 10 micrograms per deciliter or higher. Data released in 2009 by the Centers for Disease Control and Prevention indicate that the incidence of childhood lead poisoning, defined as above, has declined from approximately 1.6 percent of children in 2002 to 0.9 percent of children in 2006.

At the same time, new data are revealing adverse health effects to children at lower levels than previously recognized. EPA, therefore, plans to begin measuring progress by tracking reductions in the number of children with elevated blood lead levels of 5 micrograms per deciliter or higher. Thus, even though initial gains have been encouraging, EPA wishes to achieve further reductions in the incidence of children with these lower, but still significantly elevated, blood levels.

Authorized states, territories, tribes, and Regions are expected to:

- Develop, refine, and implement an integrated strategy for reducing lead poisoning in children, appropriate for the Region, state or tribe, for enforcing all of the components of the lead-based paint programs.
- For the RR&P component of the strategy, Regions should:
 - Conduct at least 60 % of LBP inspections for pre-renovation education (§ 745.84) compliance, RRP recordkeeping and reporting requirements (§745.86), or on-site for work practice standards (§§ 745.85 and 745.227). Conduct no more than 40 % of LBP inspections for notification requirements (§ 745 Subpart F).
 - Section 1018-only inspections should be minimized. Instead, Section 1018 inspections should be linked with other LBP compliance inspections whenever practical, to provide a more comprehensive approach to addressing compliance with all applicable LBP regulations.
 - Initiate civil enforcement actions, as appropriate, and whenever necessary to protect communities by addressing and ultimately resolving violations of the disclosure requirements (§ 745 Subpart F), pre-renovation education requirements (§ 745.84), work practice standards (§§ 745.85 and 745.227), and recordkeeping and reporting requirements (§§ 745.86 and 745.227(i)).
 - Regions should work with authorized states to ensure they are familiar with national guidance and implement their programs consistent with the guidance.

In addition, Regions should:

- Develop integrated strategies that include methods to better target compliance activities, such as partnering with state/tribal and local health care providers to identify geographical lead poisoning hot spots.

- Encourage States to seek delegation for the RRP program.
- Conduct appropriate oversight of authorized state/territorial/tribal Section 402 and 406 programs.
- Because of variations in housing arrangements at federal facilities, particularly at some military bases, regions should closely investigate the applicability of the lead regulations to the particular facilities housing.

c. Legacy Chemicals Program (PCBs and Asbestos)

The Legacy Chemicals Program attempts to lessen chemical risk and exposure through reductions in use and safe removal, disposal and containment of certain prevalent, high-risk chemicals, known generally as legacy chemicals. Some of these chemicals were used widely in commerce and introduced into the environment before their risks were known. The LCP currently focuses on providing assistance to Federal agencies and others with responsibility for ensuring proper use of polychlorinated biphenyls (PCBs) and implementing statutory requirements to address asbestos risks in schools.

TSCA PCBs

PCBs are a persistent toxin (PBT) that bioaccumulates in food chains and poses serious risks to human health and the environment. Although PCB manufacture is banned, certain uses (transformers/capacitors) are allowed under conditions which ensure that PCBs are managed properly and not released into the environment. PCBs have also been identified in building materials (caulk, paint, and insulation) and electrical equipment (fluorescent light ballast capacitors and potting materials) used in schools, raising concerns over potential exposure to school children, teachers, and other school staff. PCBs (including export for disposal) are of international concern.

Regions are expected to:

- Follow-up on tips and complaints based on potential risk, including spills. Response may include referral to States that have TSCA PCB compliance monitoring grants.
- Use targeting tools to identify the most important PCB to conduct inspect in each states and Indian country, including use of screening tools/approaches, such as the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT), and other information, such as community input. For States with TSCA PCB grants, coverage may be provided by the State rather than EPA.
- The overall strategic plan should describe at a minimum, how the Region will cover all significant PCB commercial storage and disposal facilities within the plan's cycle. These inspections may be conducted in conjunction with RCRA TSD inspections provided the inspector comprehensively evaluates compliance with both programs.
- Continue to implement use of PCB Tablets and PCB inspection software in inspections.

TSCA Asbestos

Asbestos may be present in schools and, if disturbed and released into the air, poses a potential health risk to school children, teachers, custodial staff, and others in the school. There are no immediate symptoms of exposure; health effects may manifest 15 or more years after exposure. EPA requires Local Education Agencies (LEAs) to inspect for asbestos. When asbestos is found, LEAs must provide notification to parents and teachers, develop and implement management plans so that asbestos is not disturbed, or is properly removed, during renovations or other activities (i.e., drilling to install electrical or communications lines).

In addition, the TSCA asbestos worker protection regulations offer protection for certain state and local government employees who are not protected by the Asbestos Standards of the Occupational Safety and Health Administration (OSHA). Employees who are involved in asbestos related construction activities, certain custodial activities, or certain activities associated with asbestos-containing brakes and clutch plates are employed in occupations that pose an increased risk of potential exposure to asbestos. State and local government employers must ensure that the employees engaged in these potential asbestos exposure activities comply with applicable OSHA standards in order to ensure their employee's safety and minimize the potential for exposure to asbestos fibers while performing their job functions.

Authorized States, Tribes, and Regions are expected to:

- Within a reasonable period of time, investigate and respond (including taking enforcement action where appropriate) to any tips/complaints containing allegations that provide a reasonable basis to believe that a violation has occurred. Response may include referral to States that have TSCA asbestos compliance monitoring grants.
- Conduct inspections and take appropriate enforcement action in each State and in Indian country to assure equitable protection and ensure compliance with the TSCA asbestos regulations. State inspections under the TSCA Asbestos/AHERA grant can provide coverage for those States instead of the Region.

In addition, Regions are:

- Encouraged to coordinate, as appropriate, TSCA asbestos inspections at LEAs with inspections being conducted under other TSCA programs (e.g., lead, PCB in caulk) and/or CAA asbestos NESHAP inspections;
- Encouraged to provide adequate oversight of state/tribal programs; and
- Encouraged to target inspections at LEAs with: building stock of an age that is more likely to contain asbestos, particularly those that are undergoing renovation or energy efficiency upgrades that may disturb asbestos; at LEAs that have never been inspected; at LEAs that have not been inspected within the past ten (10) years; at LEAs that have previously been found in violation and/or been subject to enforcement action; and at private, religious, and charter schools. Websites for TSCA Asbestos Information on LEAs:
 - Department of Education – Public School LEAs:
<http://nces.ed.gov/pubs2010/pesagencies08/tables.asp>
 - US Charter Schools – Current number of Charter Schools, by State:
http://www.uscharterschools.org/pub/uscs_docs/sp/index.htm

- Parochial School and Diocesan Locator:
<http://www.ncea.org/news/SchoolDiocesanLocator.asp> and
http://www.catholicusa.com/catholic_schools_online/catholic_schools.htm
- Encouraged to conduct compliance inspections (as an alternative to inspections of LEAs) at state and local government facilities to monitor compliance with the asbestos worker protection requirements in states where state and local government employees are not protected by the Asbestos Standards of the Occupational Safety and Health Administration (OSHA);
- Ensure that state and tribal inspectors who inspect on behalf of EPA are trained and credentialed per *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA* (2004);
- For inspections conducted with EPA credentials, review and provide feedback that addresses the quality of the inspection/reports and the action taken by the Region.

3. *Reset Our Relationships with States*

The Regions should work with States and Tribes to identify any obstacles to implementation of the expectations above and work to resolve them. This includes convening routine and regular meetings between the Region and States to discuss progress towards meeting annual program and enforcement commitments, and how the State has been performing overall in its implementation of the program.

The Grants Administration Division issued guidance for the TSCA grants program that becomes effective on October 1, 2012. This guidance requires that negotiated grant workplans prominently display the following three Essential Elements: Essential Element 1 - Strategic Plan Goal; Essential Element 2 - Strategic Plan Objective; and Essential Element 3 - Workplan Commitments plus time frame. Regional Program Offices must electronically enter workplans and progress report information into an IT application currently being developed.

Where States are not meeting performance expectations, Regions should take action to enforce to address serious violations. Regions should focus oversight resources to the most pressing performance problems in States and should work to demonstrably improve state performance through these actions. OECA and the Regions will use a variety of mechanisms to ensure adequate oversight, including regular meetings and consultations with States/Tribes, grant reviews and oversight inspections.

Regions should provide:

- Regional updates on actions and outcomes through at least quarterly discussions with OECA (generally, through existing channels of communication).
- Assurance that authorization agreements, which authorize employees of state and tribal governments to conduct inspections on EPA's behalf, are in place with States and Tribes that receive TSCA Compliance Monitoring grants for PCBs, and that training requirements are met.

- Review of state inspection reports, feedback to States, and enforcement actions as appropriate, where inspections are conducted by States with EPA credentials. Additionally, Regions should provide reports to OECA in accordance with Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA (2004).
- Consultation with Tribes on the central role that enforcement and compliance plays in EPA's direct implementation program and oversight of approved tribal programs.

On a program specific basis:

a. TSCA Lead-Based Paint Program (LBP)

To ensure national consistency, OECA's role is to provide oversight of Regional RRP programs.

- Regions should focus primarily on State/Tribal program oversight and capacity-building to ensure States and Tribes are appropriately using tools to help ensure compliance, and more importantly, integrating those tools to help effectively reduce elevated blood lead levels (EBLLs) and LBP hazards in identified "hot spots"; support States/Tribes on complex or multi-State/Tribal compliance issues; and consult with States/Tribes to identify issues that may warrant areas of national focus in federal jurisdictions.

b. PCBs

- Continue the use of electronic technology in the field.

c. TSCA Asbestos

- Encourage States and Tribes to develop their own regulations and apply for a "waiver" where applicable.
- Ensure that authorization agreements, which authorize employees of state and tribal governments to conduct inspections on EPA's behalf, are in place with states/tribes that receive TSCA Compliance Monitoring grants for TSCA Asbestos (non-waiver states only).

4. *Improve Transparency*

The Regions should:

- Work with the States and Tribes using EPA credentials to ensure that the data on inspections they conduct on EPA's behalf is input into national databases. For waiver States, ensure compliance and enforcement data are provided in aggregate form as part of midyear and end of year evaluation reports. (Not applicable to lead program.)
- Enter all federal inspections (including ICDS) and enforcement cases into ICIS.
- Publicize regional enforcement actions taken through press releases.

- Distinguish state compliance data from Indian country information.
- Make information available to communities, including Tribes, who may lack access to the internet.

5. *Relevant Policies, and Guidances*

Additional information about OECA's TSCA programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/tsca/index.html>

<http://www.epa.gov/compliance/civil/tsca/index.html>

<http://www.epa.gov/compliance/monitoring/programs/tsca/asbestos.html>

C. **Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)**

EPA and the public rely on pesticide manufacturers and formulators to provide accurate information about pesticides and associated risks. Unregistered and ineffective pesticides, as well as products making false or misleading public health protection claims, pose a potential public health threat when the public makes inappropriate choices based on inaccurate or misleading information. Products used in agricultural or structural pest control settings may pose health risks to those working with or exposed to those chemicals.

A major focus of EPA's FIFRA program is to ensure compliance by pesticide registrants and to provide assistance, training, and oversight to States and Tribes carrying out FIFRA related compliance and enforcement activities under cooperative enforcement agreements. The statute gives States primary compliance monitoring and enforcement responsibility for the use of pesticides within their respective jurisdictions. Under FIFRA, EPA directly implements primary use enforcement responsibility in Indian country. However, through enforcement agreements with EPA, Tribes are allowed to enforce similar provisions under their own tribal codes.

1. *Link with Top Office of Pesticide Programs Priorities*

OECA addresses top Office of Pesticide Programs (OPP) priorities for the FIFRA program in the following ways:

- Effective Management of State and Tribal Grants/Cooperative Agreements - The FIFRA State and Tribal Assistance Grant (STAG) Program seeks to assist states, territories, the District of Columbia and Indian tribes in developing and maintaining comprehensive pesticide programs that address all aspects of pesticide enforcement and special pesticide initiatives, to sponsor cooperative surveillance, monitoring and analytical procedures, and to encourage regulatory activities within the states and tribes. OECA addresses this priority in its State Grant Guidance, issued jointly with OPP.
- Pesticide Occupational Worker Safety: FIFRA's Worker Protection Standards provide critical protection to certain workers and handlers of pesticides in agricultural, nursery, greenhouse, and forestry occupations. OECA addresses this priority in both the State Grant

Guidance and by including aspects of this priority in both the Fumigant/Fumigation and Worker Safety focus areas of the NPM guidance.

- Pesticide Container-Containment Regulation Implementation: Regulations covering pesticide container and containment requirements are still being phased in and most states/tribes are actively engaged in outreach and compliance assistance activities. OECA addresses this priority in its State Grant Guidance and has included it as a focus area in the NPM guidance.
- Pesticides and Water Resource Protection: Protecting water bodies from pesticide contamination helps assure the safety of those water resources. OPP has focused regulatory efforts, including establishing restrictive use requirements, on key pesticides of concern. In addition, a court ruling determined pesticides used in aquatic settings are not exempt from regulation under NPDES. Activities are underway to develop a process to bring pesticide use into compliance with the NPDES regulations. OECA recognizes protection of water resources from pesticide contamination is important and, as part of its core pesticides program, encourages the Regions to support State efforts to monitor compliance and enforce against noncompliance.
- Antimicrobial Hospital Disinfectants Efficacy/Misbranding: This area directly impacts public health by ensure the safe and effective use of disinfectants in hospitals. OECA has been cooperating with OPP for several years in this effort and will take enforcement action on products that fail efficacy testing, taking action in accordance with the December 2009 FIFRA Enforcement Response Policy. OECA will continue to support the antimicrobial testing program through the core FIFRA compliance monitoring and enforcement program.
- Soil Fumigation Compliance Assistance: Due to a re-evaluation of the risks associated with the use of soil fumigants, OPP has required changes to product labeling and use directions for highly toxic pesticides. In addition to compliance monitoring and enforcement relating to the use of all fumigants, including soil fumigants, OECA is specifically addressing this priority in the NPM guidance through encouraging outreach/compliance assistance activities to support implementation of the new label changes for soil fumigants. Soil fumigation is included in both the Fumigant/Fumigation and Worker Safety focus areas. OECA's State Grant guidance also addresses soil fumigation through outreach, education, and compliance activities.

2. Aggressively Go After Pollution Problems That Make a Difference in Communities

EPA will ensure compliance with and effective enforcement of FIFRA regulatory requirements. The core program should include compliance and enforcement activities covering: pesticide registration and labeling, data quality requirements (FIFRA Good Laboratory Practice Standards), efficacy and compositional integrity of hospital disinfectant products, pesticide producing establishment registration and annual production data reporting, import and export requirements, and registrant reporting of unreasonable adverse effects. The core program also supports efforts to protect human health and the environment, including water resources, through support and oversight of state and tribal monitoring and enforcement of pesticide use/misuse.

In conducting this work, Regions are expected to place special emphasis on the key focus areas identified below. All Regions are expected to participate in Mandatory Focus Areas A and B and to choose one additional area of participation from Optional Focus Areas C through F. (State and tribes with cooperative enforcement agreements may also become involved in supporting these activities, as appropriate, by including relevant activities in their negotiated cooperative agreements.)

Mandatory Focus Area A: Imports

EPA's enforcement program continues to address the illegal importation of noncompliant pesticide products into the United States by bringing enforcement actions against importers and others; providing compliance assistance to manufacturers, importers and brokers; and working with other governments, agencies and stakeholders to prevent and reduce risks of unsafe products entering our country.

Importation of pesticides and devices is governed by FIFRA Section 17(c). All imported pesticides intended for use in the United States must be registered as required by Section 3 of FIFRA before being permitted entry into the US. Pesticide devices that are imported, although not required to be registered, must be produced in a registered producing establishment, and must not bear any statement, design, or graphic representation that is false or misleading in any particular. Pesticides and devices must be properly labeled in accordance with FIFRA and Title 40 of the Code of Federal Regulations, Section 156. When importing pesticides or devices to the U.S., the importer must submit to the appropriate EPA regional offices on EPA Form 3540-1 "Notice of Arrival (NOA) of Pesticides and Devices." Department of Homeland Security/Customs and Border Protection (CBP) regulations prohibit the importation of pesticides without a completed Notice of Arrival (NOA).

Illegal pesticide imports include a wide range of products, such as naphthalene mothballs and related products (moth tablets, clothes hangers and urinal cakes), chlorine pool disinfectants, insecticidal chalk, roach killers, mosquito coils and rat poisons. Illegal pesticide imports, which can present significant human health and environmental risks; have been linked to poisonings of children and pets resulting from use of these products.

EPA Regions will be the primary source of inspections and enforcement for this focus area, States may become involved through Region-to-State referrals to monitor import compliance or States may encounter imported products during the course of their other compliance monitoring inspections. EPA should make their States aware of EPA's strong interest in import compliance and be should encourage them to cooperate and collaborate with EPA when situations warrant.

Regions should work with U.S. Customs and Border Protection (USCBP) to identify pesticides and/or pesticide devices in violation of FIFRA and prohibit illegal imports from entering the U.S. channels of trade. Regions should conduct pesticide import inspections based on identified targets at border crossings and other ports of entry, conduct sweeps and take samples, when appropriate.

In addition, Regions should:

- Monitor import compliance through inspections at the designated destination point for the imported products. Such inspections would be conducted after the imported pesticides have cleared U.S. Customs and have entered into the country.
- Place special emphasis on compliance in Foreign Trade Zones.
- Focus on importers with a history of noncompliance or significant importation activity from countries frequently associated with noncompliant shipments.
- Screen for potential discrepancies concerning country of origin sources for active ingredients used to produce registered pesticides while reviewing Notices of Arrival (NOAs). Where potential discrepancies are noted, follow-up PEIs may be warranted to further investigate the matter.
- Conduct educational campaigns in urban neighborhoods that are at high risk for using illegal imports to facilitate reporting of tips/complaints from the public about the sale/distribution of illegal pesticide imports.
- Take enforcement actions, as appropriate, to ensure optimum deterrence effect and compliance impact.
- Address noncompliance by taking enforcement action against violative import shipments and then, when appropriate, develop cases that address corporate-wide noncompliant behavior.

Mandatory Focus Area B: Supplemental Registrations

Supplemental registrations are a continuous source of concern for regulators across the country. States, which conduct thousands of marketplace inspections each year, have raised concern over these labels for years, citing them as a major source of noncompliance. Supplemental registrations are distributor labels approved for marketing as a sub-registration to a registered pesticide. These products are marketed by the distributors using labels that are slightly modified versions of the base product label. Although required to be consistent with the labels of the basic registered products, distributors have frequently deviated substantially from the accepted labels. Such unapproved revisions to the labels and product labeling can lead to misuse and misapplication as well as pose significant risks to the users who rely on product labels to inform them about proper and safe pesticide use. These labels have not historically been closely monitored through the Agency's pesticide registration process. Due to the potential risk associated with the use of improperly labeled pesticides, it is important that EPA aggressively pursue compliance for supplemental registrations.

Supplemental registrations have been issued for a wide range of pesticide products, including agricultural chemicals, pesticides used for residential pest control, lawn and garden pesticides, as well as for disinfectants and other antimicrobial products. They also represent pesticides in every toxicity category from Tox 1 Restricted Use Pesticides to minimal risk products.

To address noncompliance in this focus area, emphasis will be placed on targeting registrants with a large number of current supplemental registrations or registrants marketing Tox 1 category pesticides under distributor brand name labels and doing a comprehensive review of

those distributor label products. Product compliance will be determined through comprehensive review of product labels and labeling and product chemistry, when appropriate.

Each Region will conduct PEIs and other marketplace inspections, as appropriate, and as coordinated with the states, to monitor compliance in this focus area. States may wish to participate, too, and can be a significant source of information about noncompliant supplemental registration products.

Regions should monitor for label/labeling compliance, product composition, and compliance with the provisions as described in to 40 CFR § 152.132, including the restrictions on where and how a supplemental distributor pesticide may be produced and packaged. This should include any contract manufacturing agreement(s) that should be in place.

Enforcement actions should be developed to address corporate-wide compliance and not focus on a single product noncompliance. In addition, Regions should coordinate with the Office of Civil Enforcement's Waste Chemical Enforcement division and other Regions in developing corporate-wide cases.

Regions are expected to take enforcement actions, as appropriate, to ensure optimum deterrence and compliance impact.

Optional Focus Area C: Fumigants/Fumigation

Fumigants are a class of highly toxic pesticides that are efficacious in a gaseous stage, making them very hazardous to handle and use. These products have a wide range of application use, including treatment of residential structures, warehouses, transportation vehicles, grains and other agricultural commodities, and soil. Improper or inadequate use directions and safety precautions on the product labeling and improper use of these products often result in serious exposure incidents potentially leading to death or hospitalization. Due to the potential risk associated with fumigant use, it is critical that EPA and the States work collaboratively to proactively monitor compliance with existing product labeling requirements, as well as proper use of fumigant products.

In FY2008, OPP released a Reregistration Eligibility Decision (RED) that requires important label changes incorporating significant new safety measures for soil fumigant pesticides to increase protections for agricultural handlers, workers and bystanders (e.g., people who live, work, or otherwise spend time near fields that are fumigated). The RED addresses the fumigant pesticides chloropicrin, dazomet, metam-sodium/metam-potassium (including MITC), and methyl bromide. Labeling changes required by the RED started appearing in the market place in 2010, although EPA has delayed implementation of the second phase of required label changes. Consistent with OPP's fumigant initiative, outreach and compliance monitoring will be promoted to make users aware of future labeling changes for soil fumigants.

Although the Soil Fumigant RED addresses significant regulatory changes for those products and will require a focused effort to ensure compliance with the new safety requirements, the NPM Guidance's fumigants/fumigation focus area is not primarily targeted on soil fumigant use

compliance. Instead, this focus area encompasses product regulatory compliance and use/application compliance for all areas of fumigation including structural (residential and commercial), transportation vehicles and containers, soil, agricultural commodities, and other products.

Targeting should consider production factors (facility location, production volume, and product) as well as use/application factors (use patterns of concern and volume/frequency of use). For FY2012, participating Regions are expected to implement one or more of the compliance monitoring approaches identified below and to initiate appropriate enforcement actions.

EPA has primary responsibility for monitoring compliance and initiating enforcement action against violators of pesticide user requirements where states lack primacy and in Indian country unless a Region and a tribe maintain a cooperative enforcement agreement. In addition, States have primary responsibility for monitoring compliance and initiating enforcement action against violators of pesticide use requirements (referred to as “primacy”). Regions are encouraged to determine whether there are opportunities for federal cases to support state efforts and initiate federal cases that arise in Indian country. Federal involvement or support can provide significant benefits by addressing noncompliance from a national corporate-wide perspective, facilitating compliance efforts involving multiple States and/or Regions, and enhancing public awareness.

OECA will work with OPP to obtain FIFRA Section 6(a)(2) information across a broad class of pesticide fumigants including structural, grain, and soil, among others. Section 6(a)(2) information, together with information regarding fumigant incidents from the States, press and other available sources, will help target fumigant uses where an enforcement monitoring presence may significantly deter future violations.

Regions should work with their States to identify federal and state PEI opportunities, with special emphasis placed on the priority fumigants frequently involved in exposure incidents (i.e., sulfuryl fluoride, methyl bromide, aluminum phosphide, zinc phosphide, metamsodium, and chloropicrin). State PEI inspections can be applied toward meeting negotiated PEI inspection commitments within existing cooperative agreements. PEI inspections conducted by regional inspectors will continue to help build regional expertise. Physical sampling and analysis and documentary sampling is encouraged. Physical samples of fumigant gases should not be taken; only documentary samples of the labeling, container, and other appropriate materials should be sampled. Physical samples of non-gas fumigants can be sampled and analyzed.

Regions should work with their States to identify opportunities for fumigation use/misuse inspections in a variety of venues, with special emphasis on those use patterns frequently associated with exposure incidents (i.e., residential buildings, commercial grain elevators and granaries, on-farm granaries, seed warehouses, and agricultural crop soils). Where appropriate, these State inspections may be applied toward negotiated cooperative agreement use/misuse inspection commitments.

When monitoring compliance in application settings subject to FIFRA’s Worker Protection Standards (WPS), such as on-farm use of grain or soil fumigants, compliance with the WPS labeling requirements should also be monitored.

Consistent with the State Grant Guidance, States should conduct education, outreach and compliance assistance activities for communicating the new labeling requirements for soil fumigants. Although implementation of the soil fumigant RED labeling requirements will focus on training and compliance assistance through FY2012, in instances of misuse or abuse, appropriate enforcement response should be taken.

EPA should engage in each of the above actions where the Region directly implements the FIFRA program, including in Indian country.

Enforcement actions should be pursued under both State and Federal authorities, as appropriate. Similarly, EPA will pursue enforcement actions under FIFRA when noncompliance arises in Indian country. Significant use or product compliance violations discovered during state or tribal investigations should be considered for referral to EPA for federal enforcement, when appropriate. Regions should work with States and Tribes to identify opportunities within existing cooperative agreements for federal involvement or case support (particularly in cases involving human exposure, death, or other serious non-compliance). Headquarters will provide assistance, as needed, to States, Tribes, and Regions in support of enforcement actions. Headquarters will develop a plan to coordinate filing of enforcement cases to ensure optimum deterrence effect and compliance impact.

Optional Focus Area D: Worker Safety

Agricultural farm workers and pesticide applicators face a disproportionately high risk of exposure to pesticides (from mixing, loading and applying pesticides; hand labor tasks in pesticide treated crops; and pesticide drift from neighboring fields). Studies show that farm worker families have higher levels of pesticide exposure than non-farm worker families (take-home exposure transfer of pesticide residues and proximity of housing to treated areas). There are 2 million farm workers in the US, over a million certified applicators, and 2–3 million noncertified applicators applying pesticides under the supervision of certified applicators. It is important to protect farm workers from occupational pesticide hazards to ensure their safety in the workplace and viability as a community.

Under FIFRA, States with primacy enforce pesticide use, including the worker protection standards. States with primacy also conduct compliance monitoring inspections. Regions are encouraged to determine whether there are opportunities for federal cases to support state efforts. Where EPA implements FIFRA, including in Indian country, the Agency enforces requirements governing pesticide use and conducts compliance monitoring inspections. Tribes with cooperative enforcement agreements with EPA may conduct compliance monitoring inspections under their own tribal codes.

To optimize the risk reduction potential of compliance monitoring, Regions are expected to place particular emphasis on farming activities that typically involve frequent use of highly toxic pesticides, such as in fruit and vegetable production and on-farm grain and soil fumigation. Compliance monitoring and enforcement activities should include product and use inspections.

Performance expectations for an active federal cooperative compliance/enforcement role within the Worker Safety focus area include:

- Regions should work with their state and tribal partners to target federal and state PEI inspections (focusing on high toxicity pesticides subject to FIFRA's Worker Protection Standards (WPS) labeling requirements and associated with high-risk applications/uses such as fruit and vegetable production or on-farm grain and soil fumigation) to ensure label compliance.
- Monitor use compliance in application settings (e.g., on-farm grain or soil fumigation, applications to fruit and/or vegetable crops) subject to WPA and monitor compliance with the WPS labeling requirements. Focus should be on pesticides with high risk for exposure.
- Enforcement actions should be pursued under State, Federal, or Tribal authorities, as appropriate.
- In order to optimize the deterrent impact of the enforcement action, significant misuse violations should be investigated in a comprehensive manner to determine comprehensive compliance with FIFRA.
- States should be encouraged to refer use and non-use cases to EPA, when appropriate.
- Regions are expected to work with States to identify opportunities within existing agreements for federal involvement or support (particularly cases involving exposure or death).
- Significant use or product compliance violations discovered during State or Tribal investigations should be considered for referral to EPA for federal enforcement, when appropriate.
- Headquarters will provide assistance, as needed, to States, Tribes, and Regions in support of enforcement actions.
- Ensure state and tribal inspectors who inspect on behalf of EPA are trained and credential per *Guidance for Issuing Federal EPA Inspector Credentials for Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA* (2004)

Optional Focus Area E: Retail Marketing

Until recently, EPA has focused enforcement against the producer or registrant of violative product(s). However, retailers of noncompliant products must also comply with FIFRA. One action against a retailer may result in bringing numerous pesticides into compliance with FIFRA. Taking enforcement at the retail level, as well as at the producer or registrant level, can have a very significant impact on gaining product compliance. Deterrence likely increases due to heightened end-use consumer awareness and the adverse publicity generated against the retail store, the product, and the manufacturer.

Retail marketers of pesticide products are positioned to directly interact with the consuming public, so any enforcement action taken against products being offered for sale is quickly noted by the buying public and, as a result, purchasing patterns of the consumers can be quickly altered, thus creating a significant financial impact on all businesses with a financial interest in the distribution and sale of the pesticide product(s) involved. This provides a tremendous

incentive for registrants to quickly return the product(s) to compliance so that a positive business relationship with retailers can be preserved and a positive image can be presented and/or restored with the consuming public.

Regions should focus on national or regional retail chains operating multiple stores nationwide or in a multi-state area. Such stores often market similar products throughout their network of stores so that compliance issues can have corporate-wide implications. Such consumer-based retail stores typically offer a wide variety of pesticide device products, so addressing noncompliance at this level can immediately impact multiple pesticide producers.

Alternatively, Regions may elect to target major distributors who sell directly to specialized niche markets rather than to the general public. Examples of these retailers might be distributors that sell pesticide products and other supplies directly to hospitals, beauty salons and barber shops, funeral homes, and restaurants. These industries typically do not deal directly with traditional retail outlets for their supplies but instead purchase from specialized niche distributors. These direct-retailers often handle very specialized products not commonly found in the retail stores targeted to the general public and, as a result, compliance may not be as closely monitored. Additionally, many of these retailers handle distributor-label disinfectants, a product sector which has a long history of noncompliance.

Performance expectations for the retail marketing focus area include:

- Regions should conduct compliance monitoring inspections at targeted retailers.
- Regions should work with their state and tribal partners to encourage PEI and marketplace inspections in support of this focus area, including targeting follow-up PEI inspections at producers of violative products discovered at the retail inspections. Regions may consider making inspection referrals to the states/tribes to follow-up on leads and otherwise supplement federal efforts.
- Regions are expected to take enforcement actions, as appropriate, to ensure optimum deterrence effect and compliance impact.

Optional Focus Area F: Container/Containment

To ensure effective implementation of the new container/containment regulations, Regions, states and tribes should monitor compliance with the requirements in all areas of the regulated universe and for all aspects of the container/containment rule. In particular, inspections should focus on compliance with container design and labeling, residue removal, and containment requirements for registrants, re-fillers, agricultural retailers, commercial applicators, and custom blenders, as appropriate. User inspections, conducted by states and tribes, should focus on compliance with label directions for storage, cleaning, and disposal of containers. States and tribes have been actively addressing the new regulations and are likely to continue that emphasis under the State Grant Guidance.

For Regions electing to participate in the container/containment focus area, performance expectations include:

- Conducting compliance monitoring inspections at targeted producers, distributors, and other regulated non-user entities subject to the container/containment rule.
- Work with states and tribal partners to encourage a full range of user and non-user inspections to monitor all aspects of compliance for the container/containment rule in support of this focus area. States and tribes should be encouraged to refer significant noncompliance cases to EPA for enforcement action.
- Take enforcement actions, as appropriate, to ensure optimum deterrence effect and compliance impact.

Commitment FIFRA-FED1: Project regional (federal) FIFRA inspections, including those at federal facilities. Each Region should conduct minimum ten (10) FIFRA inspections. In the Comment Section, provide the number of federal facility inspections.

3. Reset Our Relationships with States

The Regions should work with States and Tribes to implement the expectations above, including:

- Convene routine and regular meetings between the Region and State to discuss progress towards meeting annual program and enforcement commitments, and how the State has been performing overall in its implementation of the program. Note: meetings can be via conference calls but at least one meeting each year should be fact-to-face. Regions may rely upon existing communications with states to meet the intent of this requirement.
- Where States are not meeting performance expectations, Regions should take action to enforce to address serious violations. Regions should focus oversight resources to the most pressing performance problems in States and should work to demonstrably improve state performance through these actions. Regions need to take action when necessary to communicate what need attention to achieve goals of the federal environmental laws and ensure a level playing field between States.
- Negotiate, oversee the implementation of and review state and tribal performance under the pesticide enforcement cooperative agreements following existing policy and guidance.
- When doing mid or end-of-year reviews, include review of cases based on complaints by farm-workers and those involving violations of regulations in the NPM guidance focus areas such as fumigants and high profile cases to evaluate whether the enforcement response was appropriate.
- When reviewing state or tribal PEI reports submitted to EPA, ensure that inspections evaluate compliance with FIFRA export requirements. Provide States and Tribes targeting assistance, especially related to inspections of producer establishments.
- Consistent with EPA's Policy on *Consultation and coordination with Indian Tribes*; OECA's *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* (January 17, 2001; and *Questions and Answers on the Tribal Enforcement Process* (April 17, 2007), the Regions should consult, as appropriate, with potentially impacted tribal governments when conducting inspections and addressing noncompliance at tribal and non-tribal facilities in Indian country.

4. Improve Transparency

Currently, OECA is exploring ways to modernize and update databases that contain information on pesticide inspections and enforcement action by state and tribal grantees (FTTS/NCDB) that will improve data quality, and provide more timely data entry and public access. Regions are expected to continue to assure the timely and accurate entry of state and tribal performance data and their own federal inspection and enforcement data.

Regions should assure timely and accurate entry of state and tribal performance data and federal inspection and enforcement data.

5. Relevant Policies and Guidances

Additional information about OECA's FIFRA programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/fifra/index.html>
<http://www.epa.gov/compliance/monitoring/programs/fifra/wps.html>
<http://www.epa.gov/compliance/civil/fifra/index.html>

Policies and guidance pertinent to the FIFRA focus areas can be found at the following:

- FY2011-2013 Grant Guidance:
<http://www.epa.gov/compliance/state/grants/fifra.html>
- FIFRA Enforcement Response Policies:
<http://cfpub.epa.gov/compliance/resources/policies/civil/fifra/>
- FIFRA State Primacy Enforcement Responsibilities: Final Interpretive Rule:
<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/1983frnotice.pdf>
- Procedures Governing the Rescission of State Primary Enforcement Responsibility for Pesticide Use Violations:
<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/1981frnotice.pdf>
- EPA WPS Agricultural Inspection Guidance:
<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/08-10-appendix4c.pdf>
- Factors To Consider When Establishing A Risk-Based Targeting Strategy For Worker Protection Outreach And Compliance Monitoring Activities:
<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/08-10-appendix4d.pdf>
- Multilingual Labeling for Imports:
<http://www.epa.gov/compliance/resources/policies/monitoring/fifra/imports/multilanglabel.pdf>
- Questions and answers on supplemental labeling, effective date, registration status for labeling purposes, foreign purchaser acknowledgement statements, and confidentiality:
<http://www.epa.gov/compliance/resources/policies/monitoring/fifra/imports/supplabel.pdf>
- Questions and answers on research and development pesticides and active ingredient concentrations:
<http://www.epa.gov/compliance/resources/policies/monitoring/fifra/imports/ai.pdf>

- FIFRA Inspection Manual: <http://www.epa.gov/compliance/resources/publications/monitoring/fifra/manuals/fifra/index.html>
- WPS Inspection Manual: <http://www.epa.gov/compliance/resources/publications/monitoring/fifra/manuals/wps/index.html>
- Project Officer Manual: <http://intranet.epa.gov/oeca/oc/ag/manual.html>

D. Specific Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Enforcement Program Performance Expectations

1. Link with Top OSWER Priorities

OECA addresses top OSWER priorities for CERCLA in the following ways:

- **Land Revitalization**: Through its Brownfields program, EPA will continue to provide for the assessment and cleanup of Brownfield sites, to leverage redevelopment opportunities, and to help preserve green space, offering combined benefits to local communities. OECA can facilitate reuse by clarifying liability at sites of federal interest (or for communities particularly impacted by the economic downturn), when perceived liability remains an obstacle and EPA involvement is critical. Brownfields are described in more detail in the Goal 3 NPM Guidance published by OSWER.
- **Cleaning Up Our Communities**: In an effort to improve the accountability, transparency, and effectiveness of EPA's cleanup programs, EPA initiated a multiyear effort in 2010 to better use assessment and cleanup authorities to address a greater number of sites, accelerate cleanups, and put those sites back into productive use while protecting human health and the environment. By bringing to bear the relevant tools available in each of the cleanup programs, including enforcement, EPA will better leverage the resources available to address needs at individual sites.

2. Aggressively Go After Pollution Problems That Make a Difference in Communities

EPA's CERCLA Enforcement program protects communities by requiring responsible parties to conduct cleanups, preserving federal dollars for sites where there are no viable contributing parties. Superfund enforcement ensures prompt site cleanup and uses an "enforcement first" approach that maximizes the participation of liable and viable parties in performing and paying for cleanups. EPA negotiates cleanup agreements with potentially responsible parties at hazardous waste sites and, where negotiations fail, either takes enforcement actions to require cleanup or expends Superfund appropriated dollars to clean up the sites. In some cases, EPA takes both actions. When EPA uses appropriated dollars, it takes action against any viable responsible parties to recover cleanup costs. Aggressively pursuing responsible parties to clean up sites ultimately reduces direct human exposure to hazardous pollutants and contaminants, provides for long-term human health protections and makes contaminated properties available for reuse.

As part of the Integrated Cleanup Initiative, OECA will take early and focused enforcement efforts to compel cleanup. Those efforts include increasing enforcement earlier in the pipeline at non-emergency removal action and RI/FS stages; expediting remedial action by holding parties accountable to negotiation timeframes and scheduled cleanup commitments; and rejuvenating the process for early identification of responsible parties to support increased site assessment, NPL listings, and early enforcement activities.

Under the ICI, OECA is reaffirming its commitment to “enforcement first” in all aspects of the Superfund program (i.e., removals, remedial, long-term stewardship, etc.). Regions should continue to focus on activities that maximize PRP involvement at Superfund sites.

EPA’s Superfund enforcement GPRA goals and performance expectations for FY 2012 are:

COMMITMENT OSRE-01: Reach a settlement or take an enforcement action by the start of remedial action at 99% of non-federal Superfund sites that have viable, liable parties.

COMMITMENT OSRE-02: Address all unaddressed costs in Statute of Limitations cases for sites with total past Superfund costs equal to or greater than \$200,000 via settlement, referral to DOJ, filing a claim in bankruptcy, or where appropriate write-off.

In addition, the CERCLA enforcement program tracks many program-level measures. These measures and their definitions can be found in the Superfund Program Implementation Manual (SPIM) at: <http://epa.gov/superfund/action/process/spim11.html>.

OSWER's National Program Managers Guidance for FY2011 establishes priorities for EPA's Federal Facilities Response program: conducting cleanup and response work at contaminated sites and rendering formerly contaminated sites Ready for Reuse. EPA has Federal Facility Agreements in place at almost all Federal facility NPL sites regarding the cleanups conducted by the facilities and EPA’s oversight of those cleanups. Those agreements lay out procedures for resolving disputes. Regions are expected to use the procedures of the agreements, or other applicable enforcement authorities (such as imminent and endangerment orders in applicable circumstances), when Federal facilities are not complying with the terms of the agreements or with other legal requirements. Additionally, Regions and headquarters offices should work together to get remaining NPL sites as well as new NPL sites under agreements or other legally-enforceable agreements.

Environmental justice (EJ) is a priority for OECA's waste programs, promoting healthy and environmentally sound conditions for all people. OECA will continue to integrate environmental justice into its Site Remediation Enforcement program by:

- Affirming its commitment to ensure that Regions and States use EJ criteria when enforcing RCRA corrective action requirements to meet RCRA 2020 goals.
- Affirming its commitment to ensure that institutional controls are implemented at sites in environmental justice areas of concern.
- Conducting an environmental justice review of new policy and guidance documents before they become final.

3. Working With States, Tribes and Local Communities

EPA will be implementing its Community Engagement Initiative, http://www.epa.gov/oswer/docs/cei_action_plan_12-09.pdf, designed to enhance headquarters and regional program engagement with States, local communities and stakeholders to meaningfully participate in government decisions on land cleanup, emergency response, and the

management of hazardous substances and waste. The initiative provides an opportunity for EPA to refocus and renew its vision for community engagement, build on existing good practices, and apply them consistently in EPA processes. Proactive, meaningful engagement with States, local governments and communities will enable EPA to obtain better information about the environmental problems and local situations - leading to more informed and effective policies and decisions.

4. Improve Transparency

The Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS) is the main database for Superfund information. The public can request specific reports by going to <http://www.epa.gov/superfund/>. In addition, Regions should continue to provide site-specific fact sheets, which include enforcement information, on regional web pages. Compliance data will distinguish State information from Indian country information. Information should be made available to communities and Tribes, who lack access to the internet.

SECTION VI: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS THROUGH CRIMINAL ENFORCEMENT

1. Criminal Enforcement Priorities

The criminal enforcement program will emphasize:

- EPA's Enforcement Goals, National Enforcement Initiatives for FY 2012-13 and Regional Enforcement Priorities
- Focusing Enforcement through Case Tiering
- Integrating Environmental Justice (EJ) into case selection and prosecutions

Case Tiering. During FY 2012, the criminal enforcement program will continue to implement and refine its case "tiering" system to focus scarce investigative resources using criteria, data and methodologies linked to OECA's goals. The objective is to focus enforcement efforts by increasing the percentage of Tier 1 and Tier 2 cases, which became a GPRA measure beginning in FY 2011.

The case tiering methodology prioritizes cases based on four categories of information:

- 1) Human health and environmental impacts (e.g., death or serious injury),
- 2) The nature of the pollutant and the release, (e.g., toxic pollutant, continuing violation)
- 3) Subject characteristics (e.g., national corporations, repeat violators), and
- 4) Unique Case Factors (e.g., collaborative efforts with law enforcement partners)

Based on these factors, all cases are "tiered" with Tier 1 cases being the most important. The tier designation is used throughout the investigative process including the opening of leads, case selection and prosecution and direction of resources for case support. (Note: a case's tier classification may change as cases are investigated and additional information uncovered).

Environmental Justice: One of the main duties of EPA's criminal enforcement program is to serve and protect the most vulnerable communities by using law enforcement tools to protect their health and local environment. EJ is a critical concept in meeting that objective. Criminal enforcement will increase its use of the Agency's environmental justice tools and methodology to help identify critical criminal cases that disproportionately impact vulnerable communities. This includes continuing efforts to work with tribal law enforcement to strengthen the effectiveness of environmental enforcement in Indian country. The program will also continue to work with Agency EJ workgroups and partnerships to integrate and focus EJ efforts.

1. Link with Critical Program Office Priorities

EPA's enforcement program relies on the criminal and civil programs working closely together both at the strategic and case-specific levels to bring to bear the most appropriate enforcement tools to protect human health and the environment in each media area.

At the national level, the criminal enforcement program will continue working with civil partners in annual planning efforts and will work together to develop systems to track, encourage and reward effective cooperation. Efforts will include assessing existing information available in both criminal and civil programs and evaluating regional cooperative efforts to date. Each program will adhere to OECA's parallel proceedings policy when both civil and criminal violations are present in an individual case, and will ensure all civil and criminal staff are trained on parallel proceedings.

At the Regional level, the enforcement offices will work with the Special Agents In Charge (SACs) to continue and strengthen joint case screening, share salient information and plan how to address violations using the most appropriate administrative, civil or criminal enforcement tools.

2. Strengthen Relationships with Law Enforcement Partners That Support State Environmental Crimes Investigations and Prosecutions

The criminal enforcement program will work with the States, Regions, Tribal governments, and other law enforcement organizations as appropriate to:

- Help these organizations build capacity to pursue environmental crime and provide investigative support to state-lead prosecutions where appropriate.
- Provide targeted training to State, tribal and law enforcement partners to enhance their abilities to safely spot, report and address environmental violations.
- Continue international enforcement efforts, e.g., working with INTERPOL to combat the illegal transnational shipment and disposal of electronic waste (e-waste), work with Canadian authorities in efforts in the Great Lakes.

3. Improve Transparency

The criminal enforcement program will:

- Publicize EPA's criminal enforcement efforts and successes to deter other potential violators.
- Continue to develop its use of new outreach methods such as facebook, twitter and mobile applications to encourage the public's reporting of potential violations and to provide leads through the fugitives web site.
- Ensure that the public can continue to find information it needs about EPA's criminal enforcement efforts, including the Summary of Criminal Prosecutions, the mobile application of the Report a Violation Website and the EnviroCrimes Mapper.

SECTION VII: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS THROUGH THE NATIONAL ENFORCEMENT POLICY ACT

A. Specific Federal Activities Program Performance Expectations

Federal activity compliance work focuses on three areas: fostering compliance and pollution prevention through international cooperation; assisting other federal agencies in making environmentally sound decisions which include early public involvement and transparency by complying with the National Environmental Policy Act (NEPA); and guiding EPA's own compliance with NEPA and applicable statutes and Executive Orders. This work implements two of OECA's FY 2012 goals by addressing pollution that matters most to communities and promoting transparency.

Regions should work to assure international compliance and prevent illegal trans-boundary movement of hazardous waste by:

- Improving environmental performance and cooperation in accordance with Goal 6 of the U.S./Mexico Border 2012 plan (Regions VI and IX).
- Enhancing enforcement, compliance, and capacity building efforts with Mexico and Canada relating to trans-boundary compliance monitoring on the U.S. borders for hazardous waste, CFCs, selected chemicals (e.g., PCBs, mercury), and other regulated substances (Border Regions).
- Improving performance of joint responsibilities along the border and ports of entry into the United States by working with the Bureau of Customs and Border Protection (CBP) through appropriate contact channels (all Regions).
- Promoting international environmental enforcement through participation in relevant organizations and networks, such as the Enforcement Working Group of the North American Commission for Environmental Cooperation (CEC) and the International Network for Environmental Compliance and Enforcement (INECE), and, in particular, its Seaport Environmental Security Network (regional participation as appropriate, based on subject matter).
- Reviewing the permit and compliance status of U.S. receiving facilities in connection with 100% of the notifications for the import of hazardous waste they receive from HQ EPA and, based on the review, recommending consent or objection to notifications within the time periods allowed under applicable international agreements (all Regions).
- As a regular part of Regional inspection activities, conducting periodic inspections of U.S. facilities which receive imported hazardous waste (TSDFs) and generators and other primary exporters of hazardous waste, cathode ray tubes (CRTs) and spent lead acid batteries (SLABs), based on information provided by OFA which identifies those facilities participating in import and export shipments.

Regions should implement the National Environmental Policy Act (NEPA) by:

- Fulfilling EPA's obligations under NEPA, Section 309 of the Clean Air Act, and cross-cutting laws, directives, and Executive Orders (e.g., Endangered Species Act, National Historic Preservation Act, Executive Order on Environmental Justice, Wetlands and Flood

Plains Protection) by reviewing and commenting on all major proposed federal actions to ensure identification, elimination, or mitigation of significant adverse effects, and making the comments available to the public.

- Ensuring that projects likely to have significant impacts (e.g., transportation, mountaintop mining, and energy) receive sound environmental analysis, use cooperation among agencies to resolve differences, consider environmental justice, incorporate innovation and support public involvement through a more streamlined and transparent environmental review process
- Ensuring that at least 90 percent of EPA projects subject to NEPA environmental assessment or EIS requirements (e.g., water treatment facility projects and other grants, new source NPDES permits and EPA facilities) are expected to result in no significant environmental impact.
- Ensuring that 70 percent of significant impacts identified by EPA during the NEPA review of all major proposed federal actions will be mitigated. (GPRA measure)
- Promoting Environmental Justice considerations throughout the environmental
- decision-making process and encouraging public involvement early in the process to maximize transparency. Working towards the goals laid out in EJ 2014, particularly the commitments regarding cross-Agency coordination to meet the challenges of the Executive Order.
- Fostering cooperation and collaboration with other Federal agencies and Tribes to ensure compliance with applicable environmental statutes; promoting better integration of pollution prevention measures and ecological risk assessment; and providing technical assistance in developing projects that prevent adverse environmental impacts to the Nation's land, water and air.
- Making categorical exclusion determinations or preparing environmental analyses (EISs or EAs) and posting them on the internet for EPA- issued National Pollutant Discharge Elimination System (NPDES) permits for new sources, for states/tribes without authorized NPDES programs; off-shore oil and gas sources, including permits for deepwater ports, EPA laboratories and facilities; and Clean Water Act wastewater treatment plant grants.
- Making Categorical Exclusion determinations or preparing environmental analyses (EAs or EISs) and posting them on the internet for Special Appropriation grants (including the Colonias Wastewater Construction and Project Development Assistance program) for wastewater, drinking water supply, and solid waste collection facilities; Border Environment Infrastructure Funds (for the US/Mexico Border Environment Cooperation Commission projects); and reviews conducted under "EPA's Voluntary NEPA Compliance Policy."
- Entering the results of their '309 reviews and NEPA compliance actions into the Lotus Notes EIS Tracking Database maintained by HQ OFA, and the SAAP system maintained by HQ OW, respectively. Additionally, Regions should report to the Office of Federal Activities quarterly on the status of their 309 reviews and NEPA compliance actions pursuant to the Government Performance Reporting Act (GPRA) reporting process, and provide other reports as may be required by the American Recovery and Reinvestment Act of 2009.

SECTION VIII: NATIONAL PROGRAM REQUIREMENTS FOR ADDITIONAL OECA PROGRAMS UNDER GOAL 5

In addition to the national initiatives and programs that can be specifically assigned to one of the four Strategic sub-objectives of water, air, waste/toxic/pesticides, and criminal enforcement, OECA has several programs that contribute to the goals of more than one sub-objective. These programs are: Multi-media, Compliance Incentives, Indian country, and Emergency Planning and Community Right to Know Act (EPCRA). In addition, OECA has specific training and state oversight program requirements.

A. Specific Emergency Planning and Community Right to Know Act (EPCRA) Program Performance Expectations

EPCRA includes two distinct programs, Community Right-to-Know under EPCRA 313 and release notification and emergency preparedness under CERCLA 103 and EPCRA 304, 311 and 312. EPA and the public rely on EPCRA for information on chemicals entering the environment, and on the storage of chemicals at facilities. EPA, States, Tribes, local entities, and communities rely on the combined EPCRA/CERCLA authorities to prepare local chemical emergency response plans, and to more safely and adequately respond to chemical emergencies. EPA must ensure that companies report accurately and within required time frames. Although there is no target for assistance activities, assistance is an appropriate tool, in particular, for smaller entities who meet the reporting criteria. Regions and States should inspect facilities that may be contributing to pollution problems that matter to their respective communities, and develop enforcement cases that produce significant environmental benefits.

1. Link with Top Office of Environmental Information Priorities

OECA addresses the top Office of Environmental Information priority for the EPCRA programs by increasing compliance of non-reporters.

2. Aggressively Go After Pollution Problems That Make a Difference in Communities

A. EPCRA 313:

Regions are expected to:

- Inspect or send information request letters to enforcement targets developed by OECA with assistance from OEI for FY 2012 to address the following categories of concern:
 - Potential non-reporters (facilities that report in one year but fail to report the following year).
 - Potential never-reporters (target facilities in the same sectors where a company may not have reported and a similar facility in the sector did report);
 - Potential data quality issues (facilities with significant changes in release estimates from one year to the next or facilities in the same sector where a facility reports significantly more/less than a similar facility in the sector).

- Facilities that submit a Form A after having previously submitted a Form R, and concerns exist as to the accuracy of this change.
- The submission of forms with errors significant enough to prevent the input of data into the Toxic Release Inventory.
- Track and prioritize tips and complaints and follow-up, as needed. OECA may provide additional targeting as part of an initiative focused on communities, chemicals or sectors of concern.
- Any inspections resulting from any of these targeting efforts will count towards the Region's overall inspection commitments.

In addition, Regions should:

- Work with the Air, RCRA and Water enforcement programs to add EPCRA questions to information requests where appropriate, evaluate the responses, and take appropriate enforcement actions or combine with other enforcement actions.
- Review and follow-up on, as appropriate, disclosures submitted under the OECA Audit Policy and Small Business Policy.
- OECA will assist in targeting inspections, but the Regions are expected to provide legal and technical enforcement case support, and either obtain additional information through federal investigation, show cause letter, subpoena and issue appropriate federal actions as appropriate; or determine that follow-up is not necessary.

COMMITMENT EPCRA 01: Conduct at least four (4) EPCRA 313 data quality inspections.

COMMITMENT EPCRA 02: Conduct at least twenty (20) EPCRA 313 non-reporter inspections.

B. EPCRA 304/311/312 CERCLA 103

Regions should:

- Use screening and targeting tools to focus limited federal resources on national and regional priority areas. In targeting for inspections, Regions should consider the presence of significant quantities of CERCLA hazardous or EPCRA extremely hazardous chemicals, proximity to population centers, a history of significant accidental releases, and any other information that indicates a facility may be high-risk.
- Evaluate compliance with EPCRA sections 304, 311, and 31 and CERCLA section 103 during CAA section 112(r) high-risk facility inspections (as described in the CAA Section of this guidance).
- Within a reasonable period of time, investigate and respond (including taking enforcement action where appropriate) to any tip or complaint containing allegations that provide a reasonable basis to believe that a violation has occurred.

- Evaluate continuous release submissions for accuracy and compliance and take appropriate enforcement actions for non-compliance.

3. *Reset Our Relationships with States*

The Regions should continue coordinating with States and Tribes.

4. *Improve Transparency*

The Regions should

- Enter all federal enforcement cases into national databases.
- Enter all federal civil judicial consent decrees into ICIS.

5. *Relevant Policies and Guidances*

Additional information about OECA's EPCRA programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/epcra/index.html>

<http://www.epa.gov/compliance/civil/epcra/index.html>

<http://www.epa.gov/compliance/monitoring/programs/epcra.html>

B. Compliance Incentives Program Performance Expectations

In addition to providing compliance assistance and taking enforcement actions, EPA promotes compliance through the use of the following incentive policies: (1) the policy on “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations” (the Audit Policy); (2) “Small Business Compliance Policy” (Small Business Policy); and (3) “Small Local Governments Compliance Assistance Policy” (Small Local Governments Policy). These policies reduce or waive penalties under certain conditions for facilities which voluntarily discover, promptly disclose, and correct environmental problems. EPA encourages the use of these policies, particularly when use results in actions that reduce, treat, or eliminate pollution in the environment or improve facility environmental management practices (EMPs).

In most quarters, EPA receives slightly more self-disclosures than are recorded as resolved. Over time, this has led to an increasing inventory of unresolved disclosures. In recognition that we need to address this inventory, the Audit Policy Coordination Team (ACT), comprised of representatives from all ten Regions and Headquarters has developed a number of practice modifications, which should reduce transaction costs, streamline and speed up the processing of disclosures. In FY 2011, the Office of Civil Enforcement will continue to work with the Regions and Headquarters offices to expedite the processing and resolution of voluntary disclosures. In FY 2012, the Regions and Headquarters are expected to continue to expeditiously process voluntary disclosures in order to prevent the increase of the pipeline, as well as to reduce the inventory.

1. *Aggressively Go After Pollution Problems That Make a Difference in Communities*

EPA's Audit Policy, Small Business Policy and Small Local Governments Policy provide incentives for regulated entities to resolve environmental problems and come into compliance with federal laws through self-assessment, disclosure, and correction of violations. EPA is

encouraging audits and disclosures that achieve significant environmental outcomes, as well as ways to improve Audit Policy implementation.

Under various Compliance Incentive Programs (CIPs), individual entities or members of a sector disclose and correct violations in exchange for reduced or waived penalties, while the risk of enforcement increases for those not taking advantage of this opportunity. Regions in consultation with Headquarters are expected to consider the use of CIPs directed at particular sectors and/or noncompliance problems, particularly key program priorities, with emphasis on violations that impact areas with environmental justice concerns, and violations that, once corrected, are likely to result in measurable pollution reductions.

2. Reset Our Relationships with States

Regions are expected to implement EPA's compliance incentive policies (<http://www.epa.gov/compliance/resources/policies/incentives>), with the assistance of State, tribal, and local agencies, to encourage the regulated community to voluntarily discover, disclose, and correct violations before regulatory agencies identify entities for enforcement investigation or response.

3. Improve Transparency

EPA will continue to enter data into ICIS regarding the receipt and resolution of self-disclosures and, at the end of FY2012, EPA will continue to report on the number of self-disclosures received and resolved together with the environmental outcomes resulting from disclosing entities correcting their violations.

C. Federal Facilities Enforcement Program Performance Expectations

EPA's compliance and enforcement program involves more than 30,000 federal facilities and installations spread across nearly 30% of the nation's territory, among which are some 10,000 currently regulated under the Agency's various statutes. As such, it is one of the EPA's largest and most diverse sectors to oversee. Given limited resources, the primary focus in this sector has been on monitoring and enforcement, given stewardship opportunities and reliable compliance assistance offered by others, including at *FedCenter*, the sector's on-line environmental stewardship and compliance assistance center sponsored by more than a dozen federal agencies. Further, while these federal installations are sometimes subject to special provisions of environmental law, EPA's general practice and policy is to hold them to the same standard of compliance as private facilities. EPA's federal facilities enforcement and compliance programs are at <http://www.epa.gov/enforcement/federalfacilities/index.html>

FFEO, in partnership with other federal agencies, will operate and expand *FedCenter* as the central point for federal agency collaboration on greenhouse gas emission response and compliance with new Executive Order 13514 on federal sustainability. See <http://www.fedcenter.gov/>

In an effort to effectively focus limited resources, FFEO and the Regional Federal Facilities Managers annually negotiate *Integrated Strategies* as part of the National Federal Facilities

Program Agenda. These integrated strategies align enforcement, compliance, and stewardship activities and help achieve environmental and health benefits by addressing those problems that matter to communities. In recent years, FFEO and the Regions implemented *Integrated strategies* in several areas, including stormwater (started in FY 2006), federal underground storage tanks (FY 2007), federal prisons (FY 2009), RCRA non-TSDFs (FY 2009), and vulnerable populations (under consideration in FY 2010). In FY 2012, Regions are expected to continue to implement these Integrated Strategies.

1. Aggressively Go After Pollution Problems That Make a Difference in Communities

Clean water action plan: Regions are expected to continue implementing the *Integrated Strategies* on stormwater and underground storage tanks. To support Regions in Assuring clean drinking water, especially on tribal lands, FFEO will research drinking water pollution and potential SDWA enforcement particularly at formerly used defense sites (FUDS). Regions and FFEO are expected to continue to implement an enforcement action against Bureau of Indian Affairs for violations at schools on BIA and tribal lands. In addition, FFEO will complete new inspection targeting capabilities for vulnerable communities.

Clean air: To reduce air pollution from largest sources and to support the Regions, FFEO will complete new research on power plants operating on military bases.

Climate and clean energy: FFEO, in partnership with other federal agencies, will operate and expand ***FedCenter*** as the central point for federal agency collaboration on greenhouse gas emission response and compliance with new Executive Order 13514 on federal sustainability. See <http://www.fedcenter.gov/>

In order to protect people from exposure to hazardous chemicals, Regions are expected to sustain a vigorous inspection and enforcement program at federal facilities. Regions and FFEO are expected to implement the *Integrated Strategy* on protecting vulnerable populations.

FFEO will continue research into non-compliance at surface impoundment sites, RCRA corrective action sites and other RCRA non-TSDF facilities. FFEO will complete new research on greater compliance/enforcement activity at formerly used defense sites (FUDS). In order to reduce risks from mineral processing, Regions are expected to address contamination and cleanup at federal abandoned mine sites. In an effort to reform chemical management enforcement, Regions are expected to address issues with PCBs in ships and asbestos and pesticides at military sites. FFEO will work to secure penalty authority against federal facilities through TSCA reauthorization. In addition, FFEO and Regions are expected to continue implementing the *Integrated Strategy* on federal prisons.

FFEO strongly encourages the Regions to take enforcement actions to improve compliance at federal facilities. For FY 2012, federal facility resources should give first priority to taking appropriate and timely enforcement actions, as defined within relevant media-specific policies, for each federal facility inspected as a consequence of Federal Facility Integrated Strategies efforts. Where appropriate, FFEO advocates including environmental management system (EMS) improvements and SEPs as part of enforcement action settlements. FFEO also urges the

Regions to take timely and appropriate enforcement actions to address violations of clean up responsibilities.

Enforcement Follow Up and Projections

At mid-year each Region must project the number of formal (1) federal facility enforcement case initiations and (2) federal facility settlements for FY 2012. The projections should not include Records of Decision at federal facility CERCLA sites. Projections can include issuance of Notices of Determinations regarding self-disclosures by federal facilities. The projections should be emailed by the Regional Enforcement Division Director to the Director of OECA's Federal Facility Office at the end of the 2nd fiscal quarter. Since these projections are outside the ACS system, they are not commitments by the Regions.

Please note the reference at Section V.D on page 61 of this Guidance to OSWER's NPMG which establishes priorities for EPA's Federal Facilities CERCLA Enforcement program. Clean up at hazardous sites: Regions and FFEO are expected to work to ensure timely completion of CERCLA Federal Facility Agreements (FFA). Regions are expected to oversee compliance by federal agencies under FFAs. Those agreements lay out procedures for resolving disputes. Regions are expected to use the procedures of the agreements, or other applicable enforcement authorities (such as imminent and endangerment orders in applicable circumstances), when Federal facilities are not complying with the terms of the agreements or with other legal requirements. Additionally, Regions and headquarters offices will work together to get remaining NPL sites as well as new NPL sites under agreements or other legally-enforceable agreements.

All federal facility enforcement actions are considered nationally significant and require consultation with FFEO. FFEO will focus its resources to make these consultations timely and effective.

Regions are encouraged to target federal facilities as part of National Enforcement Initiative areas, as well as Regional priorities, national initiatives targeted at geographic areas, EJ areas and federal facilities Integrated Strategies areas. Under Sections III, IV, and V of this Guidance, each Region must report the number of federal facilities evaluations, investigations and inspections included within commitments under the various Regional media program commitments.

COMMITMENT FED-FAC05: Each Region must conduct ten (10) federal facilities inspections to support integrated strategy areas, which include stormwater; federal underground storage tanks, federal prisons; RCRA surface impoundments, RCRA corrective action sites, and vulnerable populations. These inspections can be achieved through any combination of single media or multimedia inspections with the following limitations: (1) a maximum of three UST inspections can count toward this goal and (2) for any multimedia inspection conducted, it shall count as two inspections toward this goal. These inspections may simultaneously satisfy inspections commitments required in National Enforcement Initiative or other core program areas.

2. Reset Our Relationships with States

Regions are expected to hold States accountable for responsible federal facility compliance monitoring and enforcement activity.

3. Improve Transparency

Regions are expected to share environmental information appropriately with the public for federal facility environmental violations, including through press releases for all enforcement actions, and at federal facility cleanup sites. EPA will pursue legislative changes to ensure federal agency environmental accountability under federal laws.

D. State Review Framework (SRF) Expectations

In FY 2012, Regions are asked to support the SRF in the following ways:

- Conduct Round 3 SRF reviews on state CAA, CWA, and RCRA enforcement programs, beginning with states that did not receive a review in Rounds 2. Ensure that commitments to implement significant recommendations for program improvements are captured in appropriate negotiated PPAs, PPGs, or categorical grant agreements between the Region and the State, with accountability for carrying out those commitments. SRF review results should be integrated with, and viewed and discussed with the State in coordination with regional and state permit reviews.
- Regions should use all available data to benchmark and monitor the enforcement performance of their States. Data sources include (but are not limited to) federal and state data systems, permitting and enforcement performance reviews, and other audit or evaluation reports.
- Enter both draft and final SRF reports, which include Preliminary Data Analyses, file reviews, recommendations, state comments, and benefits arising from Framework reviews, into the Lotus Notes SRF Tracker database upon completion of a SRF review.
- Monitor the progress of States and Tribes in carrying out the recommendations of rounds 1 and 2 of the SRF, and record the progress quarterly in the Lotus Notes SRF Tracker database.
- Use results of reviews to inform annual planning and regular progress meetings with States. Where progress resolving SRF recommendations are not being made, Regions should escalate their responses to state performance issues.

COMMITMENT SRF01: Develop a schedule of state reviews for the four years of Round 3. The number of Round 3 State Review Framework reviews to be conducted, consistent with SRF guidance in FY2012, by State. Where appropriate, program improvements should be captured in appropriate negotiated PPAs, PPGs, or categorical grant agreements between the Region and the State, with accountability for carrying out those commitments.

SRF guidances, policies, and templates for reporting are found at http://www.epa-otis.gov/srf/srf_tracking.html.

SECTION IX. FY2012 OECA WORKPLAN SUBMISSION INSTRUCTIONS

A. Annual Commitment System

Following the release of the final OECA NPM Guidance, Regions should hold discussions with States and Tribes to discuss the highest priority work across the Region and States for the upcoming year. This work should be an integration of national, regional and state priorities, and consider permitting and enforcement activities that will lead to improvements in compliance and in environmental conditions. The Regions and States should discuss how to work together to ensure that the highest priority work gets done, including consideration of this NPM Guidance, along with guidance of other EPA programs.

Regions and States should develop draft numbers for the commitments contained in the guidance that relate to state and tribal activities. Regions should also assess their own resource levels in relation to the priority work identified in the regional/state discussions and the state and tribal contributions to that work, and the work outlined in the NPM Guidance.

OECA will hold a planning discussion with each Region at the senior management level during the spring of 2011 to discuss the strategic allocation of the Region's resources, with the goal of informing the negotiation of the ACS commitments for the Region for the coming year. OECA understands that the demands of ensuring compliance with the myriad of environmental laws and programs covered by this NPM Guidance may exceed a Region's resources, and wants to ensure that available resources are put towards addressing the most important sources and most serious violations that affect the environment and public health.

Current schedules call for Regions to enter their draft targets into the annual commitment system by July 9, 2011. By completing OECA and regional senior management discussions prior to this time, the process for resolving any issues and finalizing annual regional targets should be streamlined. During this same time, Regions should engage States and Tribes in negotiations to complete the grant process (PPAs, PPGs, and Categorical Grants), including translating regional targets into formal commitments supported by state-by-state agreements. All commitments should be final by October 22, 2011.

B. FTE Resource Charts

The Regions should complete FTE charts similar to the charts completed in previous planning cycles. Charts organize FTE information by goal, objective, and sub-objective, and then cross-walk to the media program elements. The importance of the FTE Resource Charts is significant due to increased interest from the Office of Management and Budget, the Inspector General, and Congress. Regions will receive FTE templates in August 2011. It is imperative that Regions complete these charts and submit these documents to Christopher Knopes and Lisa Raymer on September 30, 2011.

- 2011 Final – Enter the Region's final FTE allocation for FY2011 in the 2011 Final column.

- 2012 Proposed – Enter the Region’s proposed FTE allocation for FY2011 in the 2012 Proposed column. Headquarters recognizes that FTE levels may change after the Agency receives the FY2011 enacted budget after October 1, 2012. Therefore this number is a “best guess” estimate.

FY 2012 Measures Attachment Template

ENVIRONMENTAL PROTECTION AGENCY OECA FY 2012 NPM GUIDANCE MEASURES APPENDIX

Opt Col	G / O / S	ACS Code	Measure Text	Non- Commi tment Indicat or (Y/N)	State Perform ance Measure (Y/N)	Planni ng Target	National Target (FY2011 Pres. Bud)
	5	CAA04	Number of compliance evaluations to be conducted at majors, 80% synthetic minors, and other sources (as appropriate) by the regions. [Note: Break out evaluation projections by source classification and by compliance monitoring category (FCE, PCE, and Investigations). If the region is responsible for entering data for a delegated agency or tribe, the region should identify the delegated agency or tribe. Project the number of compliance evaluations and investigations at federal facilities. Projected investigations under this commitment are those investigations initiated by the regions for the air enforcement program outside of the National Enforcement Initiatives, and identified by the air program (e.g., MACT, NSPS).	N	N	N	N
	5	CAA06	Ensure delegated agencies implement their compliance and enforcement program in accordance with the CAA CMS and have a negotiated facility-specific CMS plan in place. Regions are to provide the number of FCEs at majors and 80% synthetic minors to be conducted by individual state/local agencies to demonstrate program implementation consistent with CMS. However, if a delegated agency negotiates with a region an alternative CMS plan, this Commitment should reflect the alternative plan. [Note: Break out evaluation projections (e.g., FCEs; PCEs included in alternative plan) by source classification]. Prior to approving an alternative plan, regions should consult with the Office of Compliance (OC) and provide OC with information on how the state/local agency compliance monitoring air resources will be redirected and the rationale for making the change.	N	N	N	N
	5	CAA07	Regions and delegated agencies should enter 100% of MDRs in AFS consistent with the Agency policies and the AFS ICR. The reporting of such complete, accurate, and timely data by delegated agencies should be reflected in written, up-to-date agreements with the regions. If the region is responsible for entering data for a delegated agency or tribe, the region should identify the delegated agency or tribe.	N	N	N	N

5	CWA07	By December 31, 2011, provide a specific NPDES Compliance Monitoring Strategy (CMS) plan for each state in the region. The plan should provide universe information for the CMS categories; sub-categories covered by the CMS and combined EPA and state expected accomplishments for each category and subcategory. The plan should identify trade-offs made among the categories utilizing the flexibility designed into the CMS policy to target the most significant sources with potential to impact water quality. At end of year provide for each state a numerical report on EPA and state inspection plan outputs, by category and subcategory.	N	N	N	N
5	CWA 09	Regions should submit the collaborative annual work plans to the Office of Compliance by December 31, 2011 for FY 2012 activities.	N	N	N	N
5	CWA10	Regions should focus their CWA enforcement work towards meeting the national target of XX% for concluding federal judicial and administrative enforcement actions resulting in a reduction of pollutants that pertain to facilities discharging into waters that do not achieve water quality standards. The regions should report their data per the November 2010 guidance issued by OECA , and any subsequent updates issued for FY2012.	N	N	N	N
5	SDWA02	Regions, as the primacy authority (and states and tribes with primacy), must commit to meeting the timely and appropriate requirements of the ERP. PWSs whose score have reached 11 or greater must either return to compliance or receive formal enforcement action within six months of having reached a score of 11. While the ERP requires all PWSs with violations be addressed and returned to compliance, the primacy authority will rely on the PWS scores presented in quarterly ETT reports to prioritize the specific systems to be addressed.	N	N	N	N
5	RCRA01	Project by State, and Indian country where appropriate, the number of TSDFs including those operated by a federal facility, to be inspected by the Region during the year. Regions must commit to inspect at least two (2) TSDFs in each State/Indian country unless OECA approves a deviation from this requirement. Financial responsibility is a component of this inspection requirement.	N	N	N	N
5	RCRA01.s	Project by State the number of TSDFs to be inspected by the state during the year.	N	N	N	N
5	RCRA03	Inspect each TSDF <i>operated</i> by States, federal departments and agencies, Tribal governments or local governments.	N	N	N	N
5	RCRA02	Project by State and Indian country, the number of LQGs, including those at federal facilities, to be inspected by the Region during the year. Regions must commit to inspect at least six (6) LQGs in each State, and 20% in Indian country, unless OECA approves a deviation from this requirement.	N	N	N	N
5	RCRA02.s	Project by State the number of LQGs to be inspected by the State during the year. At least 20 percent of the LQG universe should be covered by combined federal and State inspections unless an alternative plan is approved under the RCRA CMS.	N	N	N	N

5	RCRA04	Project by State and Indian country the number of financial assurance mechanisms to be inspected by the Region during the year. Regions must commit to review at least four (4) financial test and/or corporate guarantee submissions per year for compliance with the closure and post-closure regulations. Regions may instead choose to review other types of financial assurance instruments for facilities that did not have a financial assurance review during the national enforcement priority. The reviews should be formal Financial Records Reviews.	N	N	N	N
5	OSRE-04	Regions are to coordinate with States to review at least four (4) financial test and/or corporate guarantee submissions per year in each State (<i>see</i> ACS RCRA04). Reviews should be formal Financial Records Reviews, and take place soon after the submissions are received.	N	N	N	N
5	FIFRA-FED1	Project regional (federal) FIFRA inspections, including those at federal facilities. Each region should conduct a minimum of 10 FIFRA inspections.	N	N	N	N
5	EPCRA 01	Conduct at least 4 EPCRA 313 data quality inspections.	N	N	N	N
5	EPCRA 02	Conduct at least 20 EPCRA 313 non-reporter inspections.	N	N	N	N
5	FED-FAC05	Each Region must conduct ten (10) federal facilities inspections to support integrated strategy areas, which include stormwater; federal underground storage tanks, federal prisons; RCRA surface impoundments, RCRA corrective action sites, non-TSDFs and vulnerable populations. These inspections can be achieved through any combination of single media or multimedia inspections with the following limitations: (1) a maximum of three UST inspections can count toward this goal and (2) for any multimedia inspection conducted, it shall count as two inspections toward this goal. These inspections may simultaneously satisfy inspections commitments required in National Enforcement Initiative or other core program areas.	N	N	N	N
5	SRF01	The number of Round 3 State Review Framework reviews to be conducted, consistent with SRF guidance, (which include associated follow-up and action items) in FY2012, with resulting commitments to implement significant recommendations for program improvements that are captured in appropriate negotiated PPAs, PPGs, or categorical grant agreements between the region and the state, with accountability for carrying out those commitments.	N	N	N	N

Attachment 5
Explanation of Changes between FY 2011 and FY 2012
NPM Office

Instructions

Change from FY2011 Guidance Document	Reason for Change	Location of Information
<i>Briefly describe the significant changes from the FY 2011 guidance and specify whether it is a deletion, addition, or modification. Changes to measures may be grouped.</i>	<i>Provide the reason for the change and indicate whether the change is in response to an Agency initiative, internal process or comment on the draft guidance (e.g., Administrator’s priorities, regional priorities, regulation, initiative, result of measures review, etc.).</i>	<i>Identify where in the document the new or modified information can be found by page number and section.</i>

Template

Change from FY 2011 Guidance Document		Reason for Change	Affected Pages and Sections
	EJ section revised to align FY12 activities to Plan EJ 2014 goals.	In support of the Agency’s FY2011-2015 cross-cutting strategy <i>Working for environmental justice and children’s health</i> , OECA has developed - <i>Plan EJ 2014</i> - with a goal of “Advancing Environmental Justice through Compliance and Enforcement”.	Environmental Justice Section p. 11
	Regulation of Greenhouse Gases under New Source Review Program (addition)	The Agency began regulating greenhouse gases under the New Source Review program starting January 2, 2011. This is a new program requirement.	Clean Air Act Section p. 15
	Clean Water Action Plan narrative has been significantly expanded from the FY2011 guidance. The FY12 guidance contains more specific instructions for the regions and states on how to implement the Clean Water Action Plan such as replacing existing paper reporting with electronic reporting, creating a	FY2011 was considered a transition year for the Clean Water Action Plan in the FY11 guidance and implementation instructions for the regions and states were in the formative stage.	Clean Water Act Section p. 21-22

	new compliance paradigm, retooling key NPDES permitting and enforcement activities, and conducting comprehensive and coordinated permitting, compliance, and enforcement programs. (modification)		
	CWA Section 404 – The FY12 guidance sets expectations for the regions to participate in a Section 404 Enforcement Strategy pilot program. (modification)	In response to an IG report, OECA is implementing a pilot program to improve coordination and communication between EPA and the Corps of Engineers to improve management of the wetlands protection program.	Clean Water Act Section p. 28
	CWA Section 311 – The FY12 guidance contains more specific and detailed instructions for the effective management of the Oil Pollution Act. (modification)	In response to the events of the BP oil spill, the language in the FY12 guidance has been expanded to provide more detailed and specific instructions on the compliance and enforcement activities of an effective oil spill program.	Clean Water Act Section p. 29
	Safe Drinking Water Act Program – regions will be expected to commit to meeting the timely and appropriate requirements of the enforcement response plan (ERP). (modification)	The approach for deciding which noncompliant drinking water systems should be addressed has changed from the historical SNC approach to the new Enforcement Response Policy (ERP) approach which utilizes the Enforcement Targeting Tool (ETT) to prioritize drinking water violations.	Safe Drinking Water Act p. 32
	RCRA Corrective Action – EPA and states need to focus resources on facilities that have not made meaningful progress in meeting the RCRA Corrective Action 2020 Goals. (addition)	A National Enforcement Strategy for Corrective Action (NESCA) has been developed to encourage EPA and states to continue to work in partnership to achieve the 2020 goal. After implementing NESCA for 18 months, EPA and the states will assess their progress and make modifications to the strategy as necessary.	Resource Conservation and Recovery Act pp. 40

	Compliance Monitoring Strategy (CMS) for TSCA- In lieu of managing the TSCA program by relying on inspections, a national strategy will be developed in FY2011 including monitoring and enforcement expectations. (modification)	Implementation of the TSCA program varies from region-to-region and state-to-state making it difficult to assess if regional activities are addressing the most significant human health and environmental problems. In order to more effectively manage the program, a context for where or where not, a region is undertaking inspections will provide a clearer understanding of the program from a national perspective.	Toxics Substances and Control Act p. 42
	Flexibility in FIFRA – The FY11 guidance identified 3 focus areas for regional emphasis. In the FY12 guidance, regions are asked to support 2 focus areas and can choose among 4 options for the 3 rd focus area. (modification)	Optional focus areas added to allow more opportunities for OECA to support OCSPPS’ priorities.	Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) p. 48
Changes in FY12 Annual Commitment Measures			
	New HPPG Commitment added	Commitment will be used to track the region’s performance to target enforcement actions on facilities discharging into waters not achieving water quality standards.	p. 23
	Tribal core measures dropped (RCRA05&06)	Tribal initiative was returned to the core program in FY11. These two commitments were developed to track progress during the initiative’s transition to the core program in FY11.	
	SDWA02 language changed.	The language was changed to reflect the move from relying on historical SNC rates to the timely and appropriate requirements of the ERP for prioritizing the noncompliant systems to be addressed.	p. 32

	CWA08 dropped	This commitment was a one-time indicator for FY2011 and no longer needed for FY2012.	
	FIFRA-FED – target increased to 10	Target has been increased to correspond to the expansion in FY12 program focus areas. Additional focus areas were added to allow more opportunities for OECA to support OCSPPS' priorities.	p. 57
	CAA11 dropped	OSWER has a similar ACS Commitment (CH2) measure on number of facility management plans that OECA will use.	
	Dropped TSC01, ASB01, PCB01, LED01	TSCA commitments dropped pending development of a new TSCA compliance monitoring strategy in FY11.	